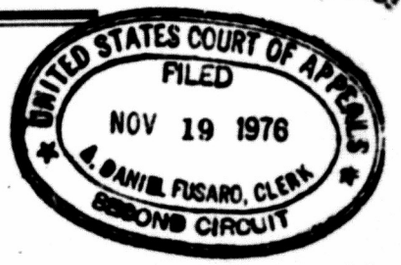
United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

ORIGINAL

76-7454-7480



United States Court of Appeals
FOR THE SECOND CIRCUIT

BIG SEVEN MUSIC CORP. and ADAM VIII, LTD.,
Plaintiffs-Appellants,

against

JOHN LENNON, APPLE RECORDS, INC., HAROLD SEIDER, CAPITOL RECORDS, INC. and EMI RECORDS LIMITED,
Defendants-Appellees,

and

MORRIS LEVY,
Additional Defendant on Counterclaim-Appellant.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

BIG SEVEN MUSIC CORPORATION, et al.,

vs.

JOHN LENNON, et, al.,

Defendants.

----------x

:Before:
:HON. THOMAS P. GRIESA,
: District Judge

75 CIVIL 1116
(TPG)

New York, January 14,15,16, 1976
January 20,21, 1976

VOL #15

STENOGRAPHER'S MINUTES

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

BIG SEVEN MUSIC CORPORATION, et al.,

Plaintiffs,

-against-

JOHN LENNON, et al.,

Defendants.

----------x

75 Civ. 1116

January 14, 1976
10:45 a.m.

BEFORE:

HON. THOMAS P. GRIESA,

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(Appearances continued page 2.)

APPEARANCES (Continued):

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(In the robing room. Counsel present.)

THE COURT: I think we ought to confirm on the record, a conference that was held yesterday.

As I understand it, and I think the record will show already, that a mistrial of this action was declared by Judge MacMahon about the middle of the day Tuesday after the case had been running for some day and a half.

Judge MacMahon then disqualified himself from further participation in the case.

Chief Judge Edelstein discussed with me at midday yesterday, the possibility of my taking the case and I agreed to do so.

Counsel appeared before me at about 4 o'clock yesterday afternoon and we had a substantial discussion off the record about procedures and some little introduction to me about the issues in the case.

I advised counsel that I was free the balance

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of the week because of a settlement of a non-jury case which had been accomplished yesterday, but I told counsel that I would have a good deal of uncertainty about my schedule after that.

This morning, I suggested to counsel that they consider waiving a jury so that we might be able to have some degree of flexibility about the presentation of proof, accommodation of foreign witnesses and so forth, that might not be possible with a jury, and counsel have considered this, and they can confirm this on the record in a moment, but they have just advised me that all parties are agreeable to waiving a jury and I have now dismissed the jury panel.

I have also told counsel that I would expect and hope that they would present the case to me in the same way that they would to a jury in that I will do everything I can to be prepared to decide the case immediately at completion of the evidence and immediately after hearing oral argument or summations of the same kind that would be made to a jury.

In other words, I very much hope to avoid a process of post-trial briefing. This means that counsel should make clear their points to me as we go along just as they would to a jury.

Is it agreeable to the plaintiffs to waive a jury, Mr. Schurtman?

MR. SCHURTMAN: Yes, it is, your Honor.

THE COURT: And to defendants Lennon and Seider?

MR. BERGEN: Yes, it is, your Honor.

THE COURT: And as to defendant Apple Records, Inc.?

MR. GRUMBACH: Yes, your Honor.

THE COURT: And to defendants Capitol Records, Inc. and EMI Records, Inc.?

MR. PRETTYMAN: Yes, your Honor.

THE COURT: If you could just get assembled out in the courtroom, we can proceed. I think it would help to have opening statements.

MR. PRETTYMAN: We have just a few preliminary matters, your Honor, which I think Mr. Bergen will present, which I think will save us some time.

MR. BERGEN: Your Honor, one of the things that we wanted to bring up was what I mentioned before, that we do intend to make a motion for attorneys' fees based on the mistrial that occurred yesterday, for attorneys' fees covering the first two days in court.

MR. SCHURTMAN: We will make a cross motion on the same basis.

THE COURT: Let us not have those right at the present moment. Can we defer that?

Anything else?

MR. BERGEN: As long as we are going to try the case without a jury, I mean, the other point that happened yesterday was that Mr. Schurtman got a rather lengthy opportunity to present the plaintiffs' side of the case and we just wanted to ask, since we are starting fresh, that we really do start fresh.

THE COURT: Oh, absolutely.

I have to confess to everybody that a lot of things were turning around in my mind and I listened with possibly half an ear.

That is the reason I would appreciate your starting afresh this morning, you make your opening statement and let us assume that I don't know anything, because I didn't take all of that in.

Okay. Thank you very much.

MR. BERGEN: Thank you, your Honor.

THE COURT: See you in a few minutes.

(Recess.)

(In open court.)

MR. BERGEN: Your Honor, before we start, there is one matter.

Are we proceeding on the ground rules that we talked about last night that we are going to try the con-

tract, the breach of contract issue rather than getting into all of these --

THE COURT: That's right.

We will try the breach of contract issue.

MR. SCHURTMAN: Your Honor, may I be heard on that?

THE COURT: All right.

MR. SCHURTMAN: All of the issues are really inextricably intertwined and for the purposes of the jury Judge MacMahon tried to segment them.

I think your Honor can keep them compartmentalized in your mind.

THE COURT: I think that makes sense.

MR. BERGEN: Your Honor, all of the parties agree that the breach of contract issue is the link pin of this case and there is no reason why we can't try that issue and if that issue is decided adversely to the plaintiffs that is the end.

MR. SCHURTMAN: My only point is perhaps the issue of damages can be left until the later point.

Let us split liability and damages. But the same conduct that constituted the breach of contract also constituted what we claim was a boycott under the Sherman Act.

Do we have to put the same witnesses on several times?

THE COURT: Of course not.

MR. BERGEN: How could the breach of contract--

THE COURT: Please.

I think for the sake of the proof, there is no problem. You are going to put on evidence and whatever legal consequences flow from that flow.

It is just a question of whether you should take up time on an opening statement explaining Sherman Act and so forth, and I really leave that up to you. I don't think it makes a lot of difference.

I would hope that you can focus largely in your argument upon the breach of contract and you won't be thought to have waived any other arguments.

MR. SCHURTMAN: I will do just that.

MR. BERGEN: What about our counterclaims, your Honor? I mean, are we going to get into that at all in the proof?

Each of the defendants has a number of counter-claims.

THE COURT: How were you going to do it before Judge MacMahon?

MR. BERGEN: We weren't going into that.

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THE COURT: Your suggestion is not to go into it now and that is perfectly acceptable to me.

MR. BERGEN: But the plaintiff is going to go into other things that really aren't related to the breach of contract issue. That is my point.

MR. SCHURTMAN: Your Honor, that is simply not so.

MR. PRETTYMAN: Your Honor, if I may say a word, with great respect, it is a little more complicated than your Honor indicated it.

If we are trying only the question whether there was a breach of contract, then I think we all understand what that evidence is and it goes in as to whether there was or was not a contract, that is the issue, whether there was or was not a contract.

We all understand that.

But whether he is going to be allowed, as he now is proposing, to go all the way through and show what happened at the very end here, that is, that we then sent telegrams to stop them from putting out and the various things that they claim that we did at the very end, then we have the burden of bringing in our witnesses to show what they did and to show the various things that they did against us which, in effect, form the basis for our counterclaims.

THE COURT: I am making a very rough judgment, but I don't think it will hurt you.

I would like to proceed in exactly the same fashion you were proceeding before Judge MacMahon.

MR. PRETTYMAN: That is fine.

THE COURT: That means that you are not foregoing any valid claims of any kind, it is simply a matter of the order of presentation.

For some reason, and I don't know the background, there was an agreed order of presentation before Judge MacMahon.

MR. SCHURTMAN: It was not agreed, your Honor. The Judge ordered it over very strenuous objections, which were renewed on several occasions.

Let me say this: Let me make my opening statement and tell you what I intend to prove and then you can then decide what should come in. At least you will know what the case is about at that point.

I can assure you that the part dealing with the anti-trust violations will take me exactly two minutes. If I exceed the two minutes, I will sit down on that point.

THE COURT: It is a little academic for me to sit here and say what I will hear and what I won't. I am not very familiar with the case.

The only way for me to get familiar with the case is to begin to hear about it, and I suggest that Mr. Schurtman make his opening statement, say what he intends to prove. If it raises any problems, I can deal with it a little better.

Okay.

MR. SCHURTMAN: Thank you, your Honor.

If the Court please, the plaintiffs in this case are the Big Seven Music Corporation and Adam VIII, Ltd.

Bit Seven Music Corporation is a music publishing company which owns the copyrights to many popular songs.

Adam VIII, Ltd. is a company which specializes in advertising and promoting popular music records and eight-track cartridges over television and selling these records --

THE COURT: Just go a little slower, please.

MR. SCHURTMAN: Surely.

And selling these records and tapes by mail order and through so-called retail fulfillment centers.

Your Honor, may be familiar with the television commercials that usually appear late at night which advertise a particular popular music record --

THE COURT: What was the term, retail what?

MR. SCHURTMAN: Retail fulfillment centers.

THE COURT: Okay.

MR. SCHURTMAN: These television promotions, your Honor, are special so-called packages in the industry where a record is promoted by means of television commercials and the commercial tells the viewer, "Send your $4.98 or $5.98," or whatever the price may be, "and we will send you the record by mail order." They usually give a post office box number.

The viewer sends in his check and he receives the record by mail.

There are some people who never want to order anything by mail, and for people like that a system has spring up of so-called retail fulfillment centers.

A retail fulfillment center is usually a chain store, like Korvettes, W. T. Grant's and so on, where the record that is advertised on television is placed on a special display counter, it usually has a big sign saying, "As advertised on television."

It is kept there for a limited period of time and people who see the TV commercials and who want to buy this record but don't want to buy it by mail, can go to one of these stores and buy the record at the store.

Now, a retail fulfillment center differs from a normal retail music store or even a normal retail department

in a department store, because normally when a record is sold through regular retail channels it may be advertised in the newspapers and by television, but it is then sold the way books are sold; you go into a music store, you look for whatever record you want to buy and you buy it and it may be there for years.

A television promotion is a hard sell campaign which usually lasts for only a few weeks or a few months. The country is saturated with these commercials, the records are either sold by mail or they are put on display in these retail fulfillment centers, they stay there for a very limited period of time, usually a few weeks, and then the campaign is over and speople move on to different campaigns.

Normally, these television packages consists of previously recorded songs, songs that have already been released to the public and that are now being gathered for such a special campaign.

And this fact becomes significant in the context of this case. I will get to it in a moment.

It is possible, and the witnesses will so testify and, in fact, it is customary, to sometimes have campaigns which deal only with mail order and sometimes campaigns which deal only with retail fulfillment centers

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and sometimes you have both.

The plaintiff, Adam VIII, Ltd. is a company which, as I said, specializes in these TV campaign promotions. It has been in existence for a number of years. It has been an enormously successful company in this field and has sold millions of records and millions of dollars worth of records by means of these special TV campaigns.

The president and chief stockholder of both Big Seven Music, which is a publishing company, as I said, and Adam VIII, Ltd., which is the sister company which handles TV promotions, is the gentleman who is sitting at plaintiffs' counsel table, Mr. Morris Levy.

Mr. Levy has had many years of experience in the music industry, about which he will testify in this case, and he is the founder of Big Seven and Adam VIII, Ltd. and he runs the two companies.

The defendant in this case are, first of all, Mr. John Lennon, who is a well-known popular singer-musician and who used to be a member of the famous Beatles group.

A second defendant is Apple Records, Incorporated, which is an American corporation that was set up by the Beatles to license the manufacture and distribution of records.

Mr. Lennon is the president and one of the

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stockholders of Apple Records.

A third defendant in the case is Mr. Harold Seider, a lawyer who acted as Mr. Lennon's business advisor in the events about which I am about to describe.

THE COURT: Just one second. I am trying to get a few notes.

Apple Records was set up to do what, according to your contention?

MR. SCHURTMAN: The licensing manufacturer and distribution of records. It was set up by four Beatles.

THE COURT: And you say Mr. Lennon is what? He is president of Apple?

MR. SCHURTMAN: He is the president of Apple.

THE COURT: Seider is who?

MR. SCHURTMAN: Seider is a lawyer who acted as Lennon's business advisor and in the context of this case we will show that he also acted on behalf of Apple.

THE COURT: All right.

MR. SCHURTMAN: The next defendant is Capitol Records, Incorporated, an American corporation which is one of the largest manufacturers and distributors of records in the United States with annual sales of almost $125 million.

A fifth defendant is EMI Records, Limited, a British Corporation --

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THE COURT: What do you say Capitol has to do with this case? I know about Capitol, but --

MR. SCHURTMAN: Pardon?

THE COURT: You are going to explain later what--

MR. SCHURTMAN: I will explain later what Capitol has to do with the case.

The fifth defendant is EMI, a British corporation, which is the parent company of Capitol. It is one of the largest manufacturers and distributors of records in the world. It has annual sales of over $1 billion.

The present dispute, your Honor, had its origin in an earlier lawsuit which was brought in this court and which was assigned to your Honor at that time in 1970. The title of the action in the earlier case was Big Seven Music Corporation against Maclen Music, Northern Music and Apple Records.

THE COURT: Big Seven against who?

MR. SCHURTMAN: Maclen -- I am told this is an abbreviation of McCartney, one of the Beatles, and Lennon.

THE COURT: Apple was a defendant there?

MR. SCHURTMAN: Apple was a defendant and a company named Northern, which was another publishing company connected with the Beatles.

That case involved a copyright infringement, an

alleged copyright infringement.

Big Seven held the copyright to a song entitled "You Can't Catch Me," which had been written by a very famous songwriter named Chuck Berry.

Mr. Lennon and Mr. MacCartney and their companies came out with a song entitled "Come Together."

Big Seven alleged that Come Together was, in essence, a copy of "You Can't Catch Me," to which they held the copyright.

The action was about to go to trial before your Honor -- as I recall it, a trial date had been set -- when the parties decided to work out a settlement.

A settlement was agreed upon. It was first worked out by Mr. Levy and Mr. Seider and it was first confirmed by John Lennon in writing, the settlement was submitted to your Honor in open court -- whenver the transcript of the settlement -- it was also confirmed in a letter from Mr. Lennon's law firm, the Marshall, Bratter firm, to Mr. Lennon, which he countersigned, and the settlement provided, in essense, that Mr. Lennon would agreed in his very next record album to record three songs owned by Big Seven, that is, of which the copyrights were owned by Big Seven, including the song "You Can't Catch Me" and two other songs to be selected by Mr. Lennon himself.

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In addition, the settlement provided that Mr. Lennon will use his best efforts to cause Apple to license two of its masters to Big Seven.

I am speaking from memory now. I think it was to license three masters, your Honor. I am wrong on that point.

A master, as your Honor may be aware, is a recording of a particular song which is recorded on a master tape and the master tape itself can then be licensed to different companies which can make records from the master tape.

I am going to get into the question of master tapes in somewhat more detail at a later point because it will become significant in this case.

The settlement also provided that if Apple did not license three of its masters to Big Seven, Mr. Lennon would then record two additional Big Seven songs.

So to put it in a nutshell, your Honor --

THE COURT: To record how many Big Seven?

MR. SCHURTMAN: Two more Big Seven songs.

To put this into a nutshell, Big Seven had the opportunity under this settlement of getting at least three and perhaps five of its songs recorded by Mr. Lennon. And our witnesses will explain to your Honor the economic

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significance of such a settlement, because of course, if their songs were recorded by Mr. Lennon and performed by Mr. Lennon, they would receive copyright royalties on the sales of the records produced by Mr. Lennon, which in this case would have amounted to many hundreds of thousands of dollars.

Beyond that, to have an artist of the stature of Lennon -- you will find that we are his greatest admirers when it comes to his artistic ability. He is one of the world's top artists in the popular field. There is just no question about it. And for Big Seven to have an artist like that record three of his songs and perhaps five of his songs would have been a tremendous coupe and would have been worth a great deal in terms of publicity and good will over and above the several hundred thousand dollars of royalties that they would have received.

So that is the economic significance of the settlement.

The story now moves on to one year later.

The settlement was in October 1973.

In September 1974, Mr. Lennon released his next album.

THE COURT: All right. The settlement was --

MR. SCHURTMAN: October of 1973. Mr. Lennon's next album was in September of 1974.

THE COURT: All right, go ahead.

MR. SCHURTMAN: The title of the album that Mr. Lennon released, which we will, of course, offer in evidence, was "Walls and Bridges." And the album, contrary to the terms of the settlement agreement, did not contain three Big Seven songs. It contained excerpts from one song owned by Big Seven, a song entitled "Yaya."

We will offer evidence, both the song itself, and testimony of witnesses to show that Mr. Lennon made this as a joke recording. He and his son played the drums for a minute or so and it was a gag. It was not a serious recording of the song. So that for all practical purposes, the album did not contain any Big Seven songs. At most, it contained that one excerpt.

In any event, Big Seven regarded this as a very serious breach of the settlement agreement that had been arrived at in the earlier case. Big Seven's lawyers wrote to Lennon's lawyers and said, "What about the breach of the settlement agreement? How are we going to remedy this?"

At that point there was a telephone conversation between Harold Seider and Mr. Levy, and Mr. Seider said, "Look, we admit we breached the settlement agreement, but we can explain what happened. We can work it out. Let's have a meeting to talk about it."

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Mr. Levy took the position, "Well, I'll be glad to meet with you, but only if you bring your principal, John Lennon, to the meeting, because I don't want to keep dealing with intermediaries."

Mr. Seider said he would check with Mr. Lennon. He then called Me Levy back and said, "Fine, Mr. Lennon is prepared to meet with you to discuss the breach of this settlement agreement."

The meeting was held on October 8, 1974 -- and this is one of the key dates in the case, your Honor -- at a supper club up on East 58th Street called the Club Cavallero.

I will be referring to this meeting from time to time as the Cavallero meeting, because that is the meeting at which we claim the oral contract which is the subject of this lawsuit, was made.

The meeting started sometime in the early evening hours. There is some dispute about what the people ate and what they drank. It was partly a social meeting, partly a business occasion. They were there to meet and discuss the settlement.

The people who participated in this meeting were Mr. Levy, Mr. Philip Cahl, a vice president of Big Seven Publishing Company on the one hand, Mr. Lennon and Mr. Seider

on the other hand.

At some point in the meeting they were joined by a Miss May Pang, who is Mr. Lennon's secretary.

In addition, there is a question as to whether a Mr. Bernard Brown, who was connected with the English Apple Company, one of the sister companies of Apple, whether he was present during this discussion. And the testimony will show when Mr. Levy and Mr. Cahl were first examined about this in their depositions, they could not remember Mr. Brown being at that meeting. They remembered him being present at subsequent meetings, but not at that one.

Mr. Brown later testified under oath that he was present at the meeting. Mr. Levy and Mr. Cahl said perhaps he was. They simply don't remember his participating in the meeting. They have no recollection of that.

I understand that Mr. Brown is going to appear as a witness. Your Honor can determine once you hear him to what extent, if any, he participated in the meeting. It is our position that even if he was at that meeting, he simply did not participate in the discussions, and perhaps that is why Mr. Levy and Mr. Cahl simply didn't focus on him. They were negotiating with Mr. Lennon, Mr. Seider and to a much lesser extent with Miss May Pang.

The meeting opened with Mr. Seider and Mr.

Lennon admitting that there had been a breach of the settlement agreement and the question was what to do about the breach.

According to our witnesses, Mr. Seider said, "Look, would it take a few hundred thousand dollars to cure this breach?"

Mr. Levy said, "No, a few hundred thousand won't be enough, because, frankly, Mr. Lennon's recording the Big Seven songs would have been worth a lot more to us."

Mr. Seider then said, and Mr. Lennon joined him and both were talking from time to time, they said, "Look, we meant to carry out the settlement agreement and let us explain to you what happened."

And they explained that Mr. Lennon had been recording an album out in California for a producer named Phil Spector, and this was going to be an album of old rock and roll songs sung by Mr. Lennon. The intention was to put out a nostalgia album of rock and roll songs which may have been an impact on Mr. Lennon in his earlier formative years as an artist.

They had started recording the songs under Mr. Spector's directions. They had recorded -- I can't remember the exact number, but I think it was eight or nine songs, possibly six -- and at that point things began to go wrong.

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As Mr. Lennon put it very bluntly, he said he thought that Spector was crazy. Spector kept shooting off a gun in the studio, he did all sorts of other weird things.

The production finally ground to a halt, and to add insult to injury Mr. Spector made off with the tapes that had been recorded up to that point and wouldn't release them. And Mr. Lennon and Mr. Seider said that they had tried to get the tapes back. They finally got them back from Mr. Spector. They had to pay approximately a hundred thousand dollars to get them back, but that Mr. Lennon was not certain that he really wanted to finish this album.

A year had gone by since its inception. Mr. Lennon was afraid that some of the nostalgia craze might have died down. He wasalso afraid that if he now completed the album and releasedit he would have to pass muster by the critics if the album was released in the normal retail channel and he was afraid the critics might pan the album.

At that point Mr. Levy came up with a suggestion -- and I am paraphrasing, you will hear the testimony-- he said, "You know, this might be a marvelous thing for a special TV promotion. We can make a terrific TV package with this. It would be a first in the sense that it won't be a rehash of something that an artist had already released previously, but it would be a famous artist releasing some-

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thing for a TV promotion.

He started to explain to Mr. Lennon what a TV promotion like that would be like and that he had a company Adam VIII, which made TV promotions, and Mr. Lennon became very enthusiastic.

Mr. Lennon said, "You know, I have been watching these TV commercials and I think this would be a marvelous idea, putting out, completing this rock and roll record and instead of selling it through regular retail channels, putting it out as a special TV promotion with mail order sales, retail fulfillment centers and so forth."

And they agreed that a record like that could sell millions of copies and be worth millions of dollars.

Well, at that point everyone became enthusiastic about this and they started discussing ways and means of putting out such a TV promotion.

They discussed a number of songs that should be included in such a record. Mr. Levy pointed out that in a TV package you tried to give the customers more for their money so you put on more songs than you would put on a normal album.

A normal album might have ten or 11 songs; a TV package might have as many as 15 or 18 or 20.

And they argued about how many songs to put on

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it and they finally agreed that Mr. Lennon would record 15 or 16 songs for this TV package.

Now, this point, your Honor, is significant, not only in terms of what they agreed to at this Cavallero meeting, but also in terms of what Mr. Lennon intended, because Mr. Lennon now claims that the recordings that he ultimately made were intended for a regular retail album, and we will show that if this had been the regular retail album he wouldn't have recorded 15 or 16 songs, that this was clearly intended for a special TV package.

They went on to discuss the price at which this album would be sold, and Mr. Lennon said or Mr. Seider said that they would like to see it sold at $6.98 an album.

Mr. Levy explained that $6.98 is too high for a TV promotion, the television customers are not used to paying that kind of price, and they finally agreed that the records would be sold at a price of $4.98, eight-track cartridges would be sold at a price of $5.98.

They then discussed royalties, how much would be paid for this album. And they agreed that Mr. Levy would pay a royalty of 12 percent of the retail price to Mr. Lennon and to Apple jointly and that Lennon and Apple would use a portion of this 12 percent to take care of the former producer, Mr. Phil Spector, because they contemplated --

THE COURT: Say that again. They would use it how?

MR. SCHURTMAN: That they would decide how much of the 12 percent to pay to Mr. Spector, because they intended to use some of the Spector recordings as part of this TV album.

The way it was put at the meeting was that they were going to try to salvage a portion of their Spector investment, for which they had already paid a hundred thousand dollars, by using some of the Spector songs in the new album.

They discussed the songs that should be included in this new album. Everyone made suggestions, "Let's use this old rock and roll song, let's use that one," and they finally agreed that on the next day they would go to a recording studio where Mr. Lennon makes some of his recordings, they would play back the old Spector tapes and Mr. Levy and Mr. Lennon would listen to these Spector tapes and a determination would be made as to which Spector tapes would be salvaged and included in the new album.

They also agreed that Mr. Phil Cahl, the vice president of Big Seven, would work together with Miss May Pang and Mr. Lennon to look at other rock and roll songs that were available in the market, Mr. Cahl would arrange

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to obtain the sheet music, the lead sheets, and he would make arrangements for the copyrights for these songs.

They further agreed at this Cavallero meeting that Mr. Lennon and Apple would be responsible for the recording costs. They would pay the musicians, they would pay for the recording studio. The other expenses in putting out this TV promotion would be paid by one of Mr. Levy's companies, either Big Seven or Adam VIII, Ltd., and it was contemplated and agreed at this meeting that the record would ultimately be put out by Adam VIII, Ltd. which specialized in TV promotions. Big Seven was simply a music copyright holder, a publishing company.

They agreed that Adam VIII would pay for the cost of pressing the record from the master tapes, the cost of packaging the record, in other words, printing up the jackets and covers and the labels, Adam VIII would pay for the cost of making the TV commercials, Adam VIII would pay for the cost of televising these commercials on the air, Adam VIII would make arrangements for the television time, Adam VIII would pay for the cost of filling the mail orders, Adam VIII would arrange for the retail fulfillment centers and, in short, Adam VIII would pay for and be in charge of the entire television promotion.

Now, one very important question that came up

at this meeting was thequestion of whether Lennon and Apple had the right to enter into a contract with Adam VIII and Big Seven for this kind of a television package.

It was well known in the industry that Mr. Lennon was under an exclusive contract to EMI and Capitol and that the Beatles were under an exclusive contract.

On the other hand, Mr. Levy was acquainted with the former manager of the Beatles, a gentleman named Alan Klein. He had heard from Mr. Klein that when Mr. Klein negotiated the Beatles' contracts with EMI and Capitol--

THE COURT: Who was acquainted with Mr. Klein?

MR. SCHURTMAN: Mr. Levy.

He had heard from Mr. Klein that when the Beatles negotiated their contracts with EMI and Capitol, which is the subsidiary of EMI in the United States, that an exception had been made for United States mail order rights in the United States.

Mr. Levy had also read an article about the Beatles and Alan Klein which appeared in Playboy Magazine. Somebody had called the article to his attention. The article contained an interview with Mr. Alan Klein. It was a long description of the Beatles and their various legal problems and there was an item in this article which said that when contracts were renegotiated with EMI and Capitol,

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the boys had retained certain United States rights.

Now, with this knowledge in mind or this information, I should say, Mr. Levy turned to Mr. Lennon and his lawyer and business advisor, Mr. Seider, and said, "Do you fellows need the consent of EMI and Capitol to make this deal with me?"

The response was, "We don't need anyone's consent to give you the mail order rights, because there is an exception for mail order rights in our contracts with Capitol and EMI. On the other hand, we are not certain whether mail order rights would include within its definition retail fulfillment centers, and we are going to have to check on that. We may need EMI's consent for retail fulfillment centers."

The question came up, "What about foreign rights? If we produced such a package, are we limited to the use or can we also sell it abroad?"

Again, the answer was, "We believe that on foreign rights you do need the consent of EMI, but since John Lennon's contract with EMI is about to expire next year anyway we don't think there will be any trouble in getting the consent."

So the way that point was left, your Honor, was that they had a definite agreement with respect to mail

order rights in the United States, because everyone agreed that there was an exception in the contracts with EMI and Capitol for mail order rights in the United States.

The question of retail fulfillment centers and foreign rights was expressly left open, and Mr. Seider said he would check with EMI and then report back to Mr. Levy.

The next item that was discussed at this meeting--and I am not saying that they were necessarily discussed in this formal order, it was a round table discussion of all these points -- the next item was, how long would such a campaign last and would Adam VIII have the exclusive rights to the package while the campaign was in progress?

Mr. Levy explained how one of these television campaigns works, and he will explain it in more detail when he testifies, but in essense he explained that these are rapid-fire deals, the country is saturated with these TV commercials, sometimes the country is divided into sections, and the campaign is usually over in a matter of a few months, royalties are paid and that's the end of it.

Mr. Levy took the position that while the campaign was in progress, he did not want Mr. Lennon or Apple nor Capitol nor EMI to sell the same album through regular retail channels, because this would create difficult

competition and confuse the consumers. And it was, therefore, agreed that as long as the campaign was in progress, and that it would take less than a year for the campaign to be completed, Adam VIII would have the exclusive rights to the package.

This meeting took several hours, your Honor, and when the meeting was finally concluded -- and during the meeting people had something to eat, people ordered drinks from time to time, the meeting was held in a supper club -- when it was finally concluded, Mr. Lennon left with great enthusiasm, said he could hardly wait to get to work, and they agreed to meet the next day in this recording studio.

Begore I go on to what happened at the recording studio --

THE COURT: I wonder: It is a matter of judgment how much detail you go into at this point, but I will be hearing the details.

Is there a way that you can --

MR. SCHURTMAN: No.

From this point on I can move very quickly.

THE COURT: Just give me the basic framework.

MR. SCHURTMAN: The main detail I had to give you were the terms of the agreement.

THE COURT: All right, fine.

MR. SCHURTMAN: From this point on I can move.

If all we had, your Honor, was our claim of an oral agreement that these people said so and so and our people said such and such, I think we might have a problem because it would be their word against ours and, of course, the order said now denies that an agreement was made and, therefore, one of the critial aspects of this case from our standpoint in proving that there was such an agreement made was what happened subsequently.

Did the parties perform pursuant to the agreement? Did Mr. Lennon tell people that he had such an agreement? And we claim that this is exactly what happened.

The very next day they went to the recording studio, they listened to the Spector tapes --

THE COURT: Who went to the recording studio?

MR. SCHURTMAN: Mr. Levy and Mr. Cahl representing Big Seven. A gentleman named Lewis Garlick, who was the Chairman of the Board of Ivy Hill Communications -- Ivy Hill Communications is a printing company which prints record jackets or covers. Mr. Levy had told Mr. Garlick about this deal and invited Mr. Garlick to come along to listen to the Spector tapes.

On the defendants' side you had Mr. Lennon, Miss May Pang and Mr. Bernard Brown, as well as the various

studio technicians, engineers and so forth.

They listened to the Spector tapes, they decided which ones could be used, which ones shouldn't be used, they discussed it, and then Mr. Levy and Mr. Cahl arranged for additional music of rock and roll songs to be made available to Mr. Lennon so that Mr. Lennon could pick and choose which songs he wanted to include. Mr. Cahl was delegated to the job of getting the copyright clearances, getting the sheet music and arranging for it so that Mr. Lennon could, in fact, use the selections.

We will offer evidence on this point, your Honor, of a list of songs, part of which is in Mr. Lennon's own handwriting, which he gave to Mr. Cahl indicating which songs he was interested in.

The next thing that happened -- and I am skipping over some of the intervening details, I will just get to the key events, your Honor -- was that Mr. Levy and Mr. Lennon had a discussion about rehersals, because Mr. Lennon said he was flying in or bringing in several of his musicians, people that he normally worked with whom he would want to use to record this album. And the question was where should these rehearsals be held.

Mr. Lennon made the point that it is difficult having these out of town musicians and rehearsing in New

York, there are too many distractions, you can never hold them altogether, and then Mr. Levy made a suggestion.

He said, "Look, I have a big farm in upstate New York. It has a big house, plenty of guest rooms, facilities for rehearsals. Why don't we take everyone up to my farm and hold the rehearsals there?"

Mr. Lennon thought this was a fine idea. Mr. Levy and Mr. Cahl made arrangements for everyone, Mr. Lennon, Miss May Pang, the musicians, most of the musicians wifes and girlfriends, everyone to go up to the farm, and they spent a three-day weekend at the farm rehearsing for this rock and roll album.

There were at least 30 hours of rehearsals and you will get a detailed description of what happened at the farm.

THE COURT: When was that?

MR. SCHURTMAN: This was the weekend of October 17.

THE COURT: 1974?

MR. SCHURTMAN: 1974, approximately nine days after the October 8 Cavallero meeting.

They had these rehearsals and, in addition to that, they sat around a dinner table at the farm discussing the album. There were discussions on how Adam VIII would

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promote this album.

There was no secret that Lennon had made the deal for Adam VIII to put out this album and we will present independent disinterested witnesses, people who are interconnected with either side, who happened to be at the farm that weekend -- Mr. Levy runs an open house at his farm and he consequently has guests in who drop by and partake of the hospitality -- and these people will testify that Mr. Lennon told them that he was making an album for Mr. Levy.

Once the rehearsals were over, Mr. Lennon and the musicians came back to New York, they then went to this professional recording studio, they recorded 15 or 16 songs. And the reason we keep vascillating between 15 and 16 is because two of the songs were combined in the medley and it is a question of whether you call them one or two. But in any event, this will be clarified in the testimony.

They recorded the songs and there came a point in November of 1974 when Mr. Lennon met with Mr. Levy, Mr. Cahl was present, Miss May Pang was present, and Mr. Lennon said, "Morris, I finished the album. It is done. It is a great job and I never want to look at it again, it is your baby, bye now. I don't want to listen to it again. It is all done." Or words to that effect. Mr. Levy will give you

the exact words.

Mr. Levy said, "Fine. When do I get the master tapes?"

That same evening Mr. Lennon arranged for the record studio where the tapes had been made, to send them over to Mr. Levy.

Mr. Levy received the two tapes, he played them the next morning, he was said that they were commercially sound and he was all set to go ahead and produce the album.

I should also say that either at the same meeting or at or about the same time, Mr. Lennon told a disc jockey named Frankie Crockett, who we also expect to be a witness, we subpoenaed him --

THE COURT: You don't need to give me all the elements. Let us get to the end and then I can hear the defense side of it and just get the basic contentions and move on.

MR. SCHURTMAN: Let me finish on what happened. There is a technical question.

If you will give me two minutes to just explain the tapes, because --

THE COURT: Sure.

MR. SCHURTMAN: That is going to be a problem

issue in this case.

THE COURT: All right.

MR. SCHURTMAN: When you record music on master tapes, the tapes can either be seven and a half inch per second tapes or 15 inch per second tapes or you can record it on other speed tapes, too. The speed of the tape has no bearing on the quality of the tape.

The tapes that were delivered to Mr. Levy were seven and a half inch per second tapes, and Mr. Levy ultimately made the Adam VIII record from seven and a half inch tapes.

The defendants take the position in this case that you cannot make a commercial record from a seven and a half inch tape, that it must be done from a 15 inch tape.

We are going to put in evidence that many successful commercial records have been made from seven and a half inch tapes and at the appropriate point, your Honor, we would like to play the tapes and the records and your Honor can listen to it and determine what the differences in quality would have been, because ultimately the question is what would the listener have heard and not what does some engineer think of the number of decibels and so on. So that is the story on the tapes.

Now, the next thing that happened was that Mr.

Levy heard from Mr. Seider. Mr. Seider told Mr. Levy that he had come to the conclusion that no consent was necessary from EMI with respect to foreign rights and with respect to retail fulfillment centers.

Then Mr. Levy and Mr. Lennon decided they were going to spend the Christmas holidays together in Florida to work on TV commercials. They went to Florida together, but problems came up. They didn't work --

THE COURT: Who was that?

MR. SCHURTMAN: Levy and Lennon.

THE COURT: When was this, Christmas 1974?

MR. SCHURTMAN: This was Christmas 1974.

Mr. Lennon got involved in some completely different negotiations having nothing to do with this situation. He didn't have time to work on the TV commercials. Nothing was said about calling the deal off.

When Mr. Levy came back from Florida earlier in January of 1975, he found a letter waiting him from the Marshall, Bratter firm. They were the attorneys for Lennon and Apple. And the letter told Mr. Levy, "Okay, we are now ready to proceed with the second part of the settlement agreement before Judge Griesa."

The second part was, "We are ready to license three masters owned by Apple to Big Seven."

Mr. Levy immediately wrote back a letter to Marshall, Bradder which said, in essense, "What are you talking about? At the October 8 meeting we agreed to cancel the settlement agreement and the settlement agreement was superseded by an agreement under which Mr. Lennon and Appel agreed to put out this television package through Adam VIII and that's the present deal and you better check with your clients.

There was no response to this letter. This letter was in early January 1975.

Instead, Mr. Levy received information that Lennon, Capitol and EMI, together with Mr. Seider, had decided to put the same album out on a regular retail basis through Capitol.

Your Honor, how can they do it technically? Well, technically, when master tapes are made in a studio, the studio keeps the master tapes and it releases copies of the master tapes to the record companies which then actually press records from these master tapes. It is sort of analogous, if I may suggest an analogy, to a film where somebody keeps the original negative and then prints are made and sent all over the world.

In this case copies of the master tapes had been delivered to both Adam VIII and they were subsequently

delivered much, much later to Capitol.

Capitol went ahead and put out its own record album, Adam VIII went ahead and put out a record album. The record albums contained substantially the same songs. The Capital album dropped one or two songs, as I recall it, but all the others are the same.

Your Honor can listen to both of these recores for yourself to determine whether there is any difference between them as far as the arrangements are concerned and the sound. We claim they are identical, that Mr. Lennon made no changes after he had delivered the tapes to Mr. Levy.

Capitol and EMI threatened Mr. Levy with an injunction. Mr. Levy said, "Fine, I'll fight the injunction."

We went ahead, we pressed our records, we have thousands of records pressed, we bought TV time, we started advertising the records on television, and suddenly everything came to a halt. And what brought it to a halt was not an injunction, your Honor, because the testimony will show that the defendants met and decided among themselves that their case was too weak to seek an injunction against Adam VIII, and what they did, instead, was to send telegrams to all of Adam VIII suppliers, to the pressing plant, to the printer, to the label maker, to the cover maker, to the TV

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stations, to the fulfillment organization and they threatened all of these people with lawsuits and have damages if they did business with Adam VIII, whereupon all of Adam VIII suppliers came to Adam VIII and said, "Look, we can't afford to get into litigation with Capitol and EMI. We are going to have to drop this project."

Mr. Levy was left with a batch of records on his hands. The TV stations cancelled the commercials previously ordered. They refused to carry them out. The printer stopped delivering more things. The pressing plant stopped deliveries and the Adam VIII project came to a grinding halt. I think we managed to sell about 1,000 copies, maybe 12-- copies, before we were stopped.

In the meantime, Capitol went ahead, put out its own rival album, sold, I believe, approximately 370,000 copies in this country and at least another four or 500,000 copies abroad. They are still selling them, as far as I know. They are selling them not by means of a TV promotion but through regular retail channels. And at that point we brought this suit.

What we calim in this suit, and I will simply list the claims, I won't go into detail, is that there was a breach of an oral agreement, there was interference with contract, there was a boycott in violation of Section 1 of

the Sherman Act when Capitol and EMI and Lennon and Seider induced all of our suppliers to stop doing business with us. On that one we rely on the famous Supreme Court decision Clore against Hale. I'm sure you know.

THE COURT: All right.

MR. SCHURTMAN: One other point that I left out.

They also released publicity claiming that our album was unauthorized, that it was a bootlegged album that it was not genuine, and we also have a claim for intention falsehood and business disparagement based on that.

There are additional variations of these claims, I won't go into detail in them now, but that, in essense, is our case, your Honor.

THE COURT: All right.

Let us take a short recess and I will hear from the defendants.

(Recess.)

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THE COURT: All right, Mr. Bergen.

MR. BERGEN: Your Honor, my name is James Bergen, and I represent John Lennon and Harold Swider.

As we are all aware, Mr. Lennon was, until several years ago, a member of the famous English singing group, the Beatles. For the last four or five years, Mr. Lennon has been reorganized as a solo artist, and occasionally with his young wife, Yoko Ono, and in that time has released, through Capitol Records and EMI, seven record albums.

Since 1962, the Beatles as a group and individually have been under an exclusive contract to the defendant EMI Records, a fact that is widely known in the reorganized industry, and which Mr. Schurtman conceded on his opening statement.

THE COURT: Can you go a little slower?

MR. BERGEN: Yes, sir.

Pursuant to other agreements, Capitol Records distributes the Beatles' and Mr. Lennon's recordings in the U. S.

Mr. Lennon is the president of Apple Records, Inc., and that is a corporation that was formed in the late 1960's by the Beatles. For the last three and four years, and I guess really going back to 1969 and 1970, there has been a very serious and well-publicized dispute among the Beatles.

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THE COURT: Going back how far?

MR. BERGEN: I would say it began in approximately 1969 or 1970, your Honor.

And this, also was widely known in the recording and the entertainment industry.

As a result of that dispute, it is crystal clear that one of the Beatles could not act for the corporation, Apple Records, since they were equal partners, whether he be the president, the vice president, the secretary or the treasurer. There had to be complete agreement among the Beatles.

Mr. Lennon has asserted two counterclaims in this case, one against the plaintiffs and one against the plaintiffs and Morris Levy. I won't get into what those counterclaims involve, because we are really not going to try that issue now, but Mr. Levy, who is the president of Big Seven and Adam VIII, also owns, directly or indirectly, all of the stock of those corporations. Mr. Levy is also the president of Roulette Records, a record manufacturer, and he has been in the record and music business for over thirty years.

Now, this case revolves around what took place at a New York restaurant and club, the Club Cavallero, on October 8, 1974. You have heard Mr. Schurtman talk about that meeting, but Mr. Schurtman kind of glosses over the fact that

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the alleged agreement that was entered into that night was an oral agreement. In other words, there is no written contract, no agreement, no document and no piece of paper signed by Mr. Lennon evidencing this alleged oral agreement. Yet the plaintiffs seek millions of dollars in damages.

You are going to be asked to believe by the plaintiffs that Morris Levy, a business man of more than thirty years of experience in the record and music business, sat down with John Lennon, a composer of unquestioned status, an artist of unquestioned status, the first time they had ever met, over drinks at a New York club, and in the course of one evening, two or three hours, they entered into an oral agreement giving one of the plaintiffs the exclusive worldwide rights to a record album of John Lennon's, at a time when Morris Levy knew, as did the entire recording industry, that Mr. Lennon was under an exclusive contract with EMI.

In fact, Mr. Lennon and the other Beatles are literally knee-deep in legal documents and have been for years. Every time Mr. Lennon makes a move in terms of his legal affairs, there follows a veritable blizzard of paper.

He is an artist, who does not negotiate contracts, and very few artists do. They have other people who do that for them. He is not interested in that. He is only interested

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in his music, in producing an album and in getting the best possible sound on his records.

As I said a couple of minutes ago, October 7, 1974, was the first time John Lennon and Morris Levy had ever met. Mr. Lennon will testify that he did not enter into an agreement with Morris Levy or Big Seven on that night or at any other time, giving Big Seven rights to an album of his. Mr. Lennon will also testify that he never told Morris Levy that he had no contract which would prevent him from giving the album to Big Seven and that he never told Mr. Levy that he had not given television merchandising rights to his records to anyone.

We will prove that while Lennon and Levy met with others on October 8th, it wasn't for the purpose of discussing a proposed agreement but for an entirely different purpose: to discuss a problem that had arisen with respect to the settlement of an earlier, unrelated lawsuit, which your Honor is familiar with, in which John Lennon was not even a party.

We will also prove that there was --

THE COURT: Mr. Lennon had an interest in that lawsuit.

MR. BERGEN: He was not a party, in that he was not a named party.

THE COURT: That is really immaterial. He had an

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interest, and I recall the reason we didn't have a trial on Monday morning was that there had been an agreement reached with Mr. Lennon.

MR. BERGEN: That is correct. I am just going to get to that, your Honor.

I am not conceding that he did not have --

THE COURT: Let us not quibble.

MR. BERGEN: We will also prove that there was not any oral agreement between Lennon and Big Seven and that Lennon specifically told Levy that night that he was under an exclusive contract to EMI and that Mr. Levy, as I said a moment ago, already knew that.

I just want to go back to how the parties came to be sitting there together on October 8th.

As your Honor is aware, in October of 1973 there was a case pending in this court. At the same time, Mr. Lennon was in Los Angeles, October 1973, just beginning an album of old rock and roll songs, hits of the 1950's, with a producer, Mr. Spector. Mr. Lennon's idea was to record songs which were popular when he was growing up in Europe and which influences his music.

In early October 1973, that lawsuit was cominqto trial, and Mr. Lennon was to be a witness in New York. Although he believed the suit to be without merit, he didn't

want to come back to New York, because he didn't want to interrupt the recording sessions with Mr. Spector, so he asked Harold Seider to try to settle the case. Mr. Seider got in touch with Mr. Levy, and a settlement was finally reached on October 12th, and, as your Honor knows, the settlement was dictated on the record in open court. The terms of the settlement were also put in a letter signed by Mr. Lennon.

Now, that is important, because, having given up, according to the plaintiffs, this very important, this very valuable settlement, written settlement agreement with Mr. Lennon, the plaintiffs would have you believe that they then sat down and entered into an agreement which superseded that agreement, the written agreement, and wiped it out. But that agreement was never reduced to writing. It was an oral agreement. It was all entered into in one night.

As far as the value of that settlement goes, I don't think that it is possible to calculate that value, at least not to the tune of $500,000 to $600,000, and, again, you are going to be asked to believe that they gave up a $500,000 or $600,000 settlement for an oral agreement.

The Lennon-Spector recording sessions proceeded through October and November of 1973. Every night, though, Spector would take the tapes from the day's sessions home with him. But the sessions ceased in December, when Mr.

Spector, who was widely known in the entertainment industry as an unusual personality, stopped coming to the studio.

Whether Mr. Spector is an unusual personality or whether he is crazy or whatever doesn't have anything to do with this case, because it is also recognized that he is one of the most successful record producers in the business and has worked with Mr. Lennon before.

Spector still had the tapes of all these sessions in his possession. Rumors began to circulate that Mr. Spector was near death after an automobile accident in Arizone. Up to that point, nine songs had been recorded, including "You Can't Catch Me" and "Angel Baby", as required by the come-together settlement.

THE COURT: Let me get that. You contend that of those nine songs recorded to that point, two of them were "You Can't Catch me" --

MR. BERGEN: And "Angel Baby".

THE COURT: Refresh my memory. "You Can't Catch Me" was --

MR. BERGEN: That was required to be recorded.

THE COURT: Was that the Chuck Berry song?

MR. BERGEN: Yes. That was the allegedly infringed song.

"Angel Baby" was another song from the Big Seven

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catalog that Mr. Lennon was going to record, although he had the option to record one other song.

THE COURT: Just one second, Mr. Bergen. Let me just get this.

(Pause.)

THE COURT: I don't mean to interrupt you. You can open in whatever way you wish. But Mr. Schurtman mentioned a September 19 --

MR. BERGEN: I am going to get to that album.

THE COURT: I see. That is later in time.

MR. BERGEN: Yes. I am going to get to that in a minute, your Honor.

THE COURT: So we are still in the fall of 1973.

MR. BERGEN: We are still in like November and December of 1973, and Mr. Spector has disappeared, and he has the tapes with him.

THE COURT: All right. We are at December. All right. Go ahead.

MR. BERGEN: And Mr. Spector disappears, and Mr. Lennon can't finish the album, because Mr. Spector has the tapes. There were a number of attempts by Mr. Seider, by Mr. Lennon, by Capitol Records over the next couple of months, the next five months, as a matter of fact, to reach Mr. Spector. It was impossible.

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Finally, Spector surfaced, and after Capital paid over $100,000 to cover the recording costs of the Spector sessions, Spector gave the tapes back to Capital Records.

The reason Capitol paid the recording costs is because pursuant to Mr. Lennon's agreements with Capital and EMI, they pay his recording costs. If the album is made in the United States, Capitol pays the recording costs, and EMI reimburses Capitol. If it is made in Europe or some place else, EMI pays them.

Capitol immediately delivered those tapes to Mr. Lennon here in New York at a recording studio called the Record Plant, and that was on July 7, 1974. Prior to this, even though these efforts were going on to get back the tapes, Mr. Lennon, who is an artist who does not like to remain inactive too long, did a couple of things.

One, in February or March, he produced an album, did not appear on the album, produced an album by an artist named Harry Neilson. Then, as the spring proceeded and the Spector tapes had still not been returned, Mr. Lennon began working on an album of compositions that he himself had written, and, in fact, when he learned that the Spector tapes had been retrieved, Mr. Lennon had finished writing the songs, had arranged to have the musicians come to New York City on July 13th to rehearse and scheduled recording

sessions for July 19t...

When he got the Spector tapes back, Mr. Lennon spent a few days listening to them, and he decided that a lot of work would be required on them before they could be released as an album.

First of all, they were not enough for an album. There were only nine tracks. So he went ahead with his plans for an album of his own compositions, which was entitled "Walls and Bridges", and Capitol and EMI released that album in September of 1974. That album contained one Big Seven song, as Mr. Schurtman said, "Ya Ya". Whether it was a joke or anything -- I don't know what Mr. Schurtman basis that on -- doesn't make any difference, because Big Seven got the same royalty on that song that it would have gotten on any song.

Shortly after "Walls and Bridges" was released, Lennon went back to work on the Spector tapes --

THE COURT: Let me just get a note or two down, Mr. Bergen.

(Pause.)

THE COURT: All right. Now we have the release of "Walls and Bridges", and then you started to tell us --

MR. BERGEN: I said, shortly after "Walls and Bridges" was released, Mr. Lennon went back to work on the

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Spector tapes. He went back to the record plant and tried to get them in shape to release the album..

About the same time, Morris Levy and Seider spoke on the telephone. Levy complained that Lennon's next album was released and only one of his songs was on it, and Levy wanted to know what had happened to the other two songs.

Now, one thing about the come-together settlement plan:

When that was negotiated, Mr. Lennon was in the process of recording the Spector oldies album, and the parties anticipated that the next album, as required by the settlement would be the Lennon-Spector oldies album, which I have already told you was prevented from being released by Mr. Spector's mysterious disappearance.

Seider explained to Levy how it had been Spector's fault that the releases of the oldies album had been delayed, and Levy insisted on meeting Lennon to get the store directly from him.

Seider asked Lennon if he would meet with Levy and explained why the oldies album had not been released, and on October 8th Lennon and Levy were introduced to each other at the Club Cavallero for the purpose of having Lennon explain what had happened to the oldies album. The parties are not only in dispute as to what took place that night but also who

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was there. And this is important, because we contend that Lennon went to the Club Cavallero with his secretary, May Pang, Harold Seider and a man named Brown, Bernard Brown. After the four of them had had dinner together at the Benihana Restaurant, on 56th Street.

THE COURT: All right. Your clients contend that there were the following people -- just go through that list again and what they did, please.

MR. BERGEN: Mr. Lennon, May Pang, Harold Seider and Bernard Brown.

THE COURT: Dinner at --

MR. BERGEN: We contend that they had dinner together at Benihana's Restaurant on West 56th Street, and then they went directly from there to the Club Cavallero together.

THE COURT: All right. Go ahead.

MR. BERGEN: And they will also testify to that. However, the plaintiffs contend that Bernard Brown was not there that night at the Club Cavallero. In fact, Mr. Levy said on his deposition that Mr. Lennon was mistaken about Mr. Brown being there.

Mr. Kahl, the vice president of Big Seven, went even further. He said that Lennon was lying when he said that Mr. Brown was there.

But now there seems to be a little change in the

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story. The plaintiffs seem to be waffling a little bit on whether Mr. Brown was there. Mr. Schurtman refers to an offer when the meeting started or a statement by Mr. Seider, "Would a few hundred thousand dollars take care of this alleged breach of the settlement, the come-together settlement?"

Mr. Levy has testified on his deposition -- and Mr. Seider contends he never said that in the first place, but even Mr. Levy concedes that it was said facetiously. Lennon explained to Levy the problems with the Spector tapes in retrieving those tapes. He also told Levy that he was discouraged with the album, that it had started over a year ago and still wasn't finished, that there had been a lot of publicity about the Spector recording sessions and the album and that the critics were waiting for it.

He also thought that the nostalgia craze had passed, and he finally told Levy that three of the nine songs were of such poor quality that they couldn't be released.

Lennon explained that he thought of a couple of alternatives. He thought of turning out an EP, which is an extended-play record, which is shorter than an LP. He also thought of finishing the album and selling it on television.

When television was mentioned, Levy said that one

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of his companies sold records through TV, and then Lennon and Seider and Levy discussed the possibility of selling the album on television, but no terms, no terms of an agreement were discussed, and Lennon and Seider told Levy that EMI's permission was needed before an agreement could be made to sell the album on television because of Lennon's contract with EMI.

There was no discussion of Lennon's royalty. There was no reference to Apple Records, Inc., and yet you will hear Mr. Levy testify that John Lennon told him that he was the president of Apple Records, Inc.

I submit that it is a little hard to believe tha t John Lennon would sit down and say, "Hi, I'm John Lennon, and I'm the president of Apple Records, Inc." Nothing could be further from his mind. As far as the exclusivity was concerned, Levy was told that Lennon had an exclusive contract with EMI.

Whom does Levy rely on for the fact that there was some kind of an exception to this agreement? He relies on on Allan Klein. Allan Klein is a former manager of the Beatles and is a plaintiff in a bitterly contested litiga-tion between his company and the Beatles. He also relies on an article in Playboy Magazine -- hardly the best authority.

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Levy never asked to see the contracts, and, in fact, he never saw the contracts between Lennon and EMI and Capitol until after the lawsuit was commenced, when they were produced in discovery.

As for this exclusion in the contract, there simply isn't any, and Levy was never told that there was an exclusion. In fact, he was told time and time again, not only that night but later on, that EMI's permission was necessary.

You will hear the testimony by our witnesses that there were repeated requests that night by Mr. Levy for Mr. Seider to go to England to get EMI's permission. Mr. Seider kept telling Mr. Levy that it was premature; the album had not been finished yet.

Over the next couple of months, Mr. Lennon saw Mr. Levy socially on several occasions. Mr. Schurtman said that the next day Mr. Levy went to the recording studio, the recording plant, to listen to some of the songs. Mr. Levy went there because Mr. Lennon invited him to listen to the two songs recorded by Big Seven, "You Can't Catch Me" and "Angel Baby", because Mr. Levy wanted to hear his songs.

As far as the rehearsals at the farm in the middle of October, when Mr. Levy learned that Lennon was rehearsing his musicians prior to recording the additional tracks necessary to complete the oldies album, Levy convinced

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Lennon not to hold the rehearsals at his farm in upstate New York. In fact, Mr. Levy asked Mr. Lennon repeatedly to go to the farm, and every time Mr. Lennon had raised an objection about going, Mr. Levy had a ready answer for it, and finally Mr. Lennon went, and the musicians went.

Mr. Schurtman said that the wives and girl friends of the musicians went. There were five musicians there and one girl friend of one of the musicians.

THE COURT: Your contention would be that these were basically social things, being at the farm was --

MR. BERGEN: That is precisely it.

THE COURT: That they were there at the desire by Mr. Levy to have them there?

MR. BERGEN: That's right. And, in fact, you will hear testimony that the number of guests that flowed in and out of the farm that week end was staggering.

THE COURT: All right.

MR. BERGEN: During the week of October 21st, Mr. Lennon went back into the studio and recorded the additional tracks needed to complete the oldies album, and he continued to work on the album into the middle of November. The recording sessions took place during the week of October 21st, I think on the 22nd, 23rd, the 24th and maybe even the 25th. Neither Mr. Levy nor Mr. Kahl nor anybody associated with the

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plaintiffs had anything to do with those recording sessions. They were not there. They were not done at a studio of Mr. Levy's, and Mr. Levy and his companies did not pay one penny of the recording costs; it was all paid by EMI and Capitol, just like the recording sessions on the Spector tracks.

Furthermore, the plaintiffs didn't have anything to do with the additional work that Mr. Lennon did on the album after he had finished recording the basic tracks; the re-mixing, the over-dubbing, the mixing of the sixteen tracks down to the two-track stereo, the completion of the final record in February. He had nothing to do with it.

Finally, in mid-November, having finished recording these additional songs and after having been asked repeatedly by Mr. Levy if he could listen to the album and how the album was coming, Mr. Lennon, at Levy's request, gave him a 7-1/2 i.p.s. tape, which was a rough mix of the album, as a courtesy, so that Levy could listen to the three songs owned by his company: "You Can't Catch me", "Angel Baby" and "Ya Ya". "Ya Ya" had been re-recorded by Mr. Lennon during the October recording sessions. In other words, it was on the "Walls and Bridges" album, and it was on this oldies album.

THE COURT: The three songs again: "You Can't Take It" --

MR. BERGEN: "You Can't Catch Me", "Angel Baby" and

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"Ya Ya".

Mr. Schurtman stated that it is the defendant's position that you can't make a commercial record from a 7-1/2 i.p.s. tape. That is not our position at all. Our position is that Mr. Lennon does not make records from 7-1/2 i.p.s. tapes, and neither does any other major recording artist: classical, country and Western, popular, whatever. Major recording artists make records from 15 i.p.s. tapes -- and the i.p.s. stands for inches per second -- and they do that for a very simple reason: the quality is better. The slower that a tape goes through a tape recorder the more hissing you get on the record when you hear it.

In fact, the "Walls and Bridges" album was made on a 30 i.p.s. tape, which is even faster.

We will prove that the 7-1/q i.p.s. tape is the kind of tape you use on a home or an office tape recorder. We will also prove that when he gave this 7-1/2 i.p.s. copy to Mr. Levy, he had not completed the album and that he went back into the studio later, took out two songs, changed other songs and did a tremendous amount of work in what they call cueing the album. Cueing is kind of equalizing the sound.

THE COURT: I would very much appreciate it -- I don't want to rush anybody -- if you can get the summations

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finished by lunchtime. I think that probably I have the main features.

MR. BERGEN: I only have about three more minutes.

MR. PRETTYMAN: I will have about ten or fifteen minutes, your Honor.

THE COURT: I don't want to cut anybody short, but let us do the best we can, because we do want to get on with the testimony.

All right. Be as brief as you can now, Mr. Bergen, please.

MR. BERGEN: Yes. I am just finished.

Mr. Schurtman also referred to a visit to Florida, which he says one of the purposes of was to work on TV commercials. That just is not so.

Mr. Levy has an eleven-year-old son, and he was going to Florida for Christmas. Mr. Lennon also has an eleven-year-old son, who happened to be coming from England to spend the Christmas holidays with him. When Mr. Levy found that out, he suggested, "Why don't we take the boys to Disneyworld?" -- and that's what they did.

By early January 1975, Capitol Records had heard a tape of the oldies album and had told Seider that they wanted to release the album through their normal retail outlets --

THE COURT: Go over that again. I missed that.

MR. BERGEN: In early January, Capitol heard a tape of the oldies album, and they had told Mr. Seider that they wanted to release the album through their normal retail outlets and not through television merchandising.

On January 29, 1975, Capitol executives told Lennon that the album had great commercial possibilities and made a presentation to them of how it would be marketed here in New York City. Lennon, as is his practice on all of his records and as was the Beatles' practice on most of their records, except the earlier ones, approved the marketing concepts outlined by Capitol, the jacket design, the title of the album, which turned out to be rock and roll; and the next day, January 29h, Seider called Levy and told him of the Capital decision on marketing Lennon's album and that Capitol and EMI would not give permission to sell the album through television mail orders.

Levy asked Seider to come to his office the next day. When Seider arrived at Levy's office, on January 30th, Levy said that he had had a deal with Lennon and that he was going to release the album using the tape Lennon had given him.

Seider told Levy that there wasn't any deal between Lennon and Levy, but despite being told this, Levy went

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ahead and released the album, anyway.

Levy called the album "Roots", and we will prove that Levy did nothing in preparation for releasing this album that he claimed he had rights to until after Seider told him that EMI's permission would not be forthcoming, two and a half months after he claims he was given the master tape of the album.

On February 4th and 5th, Mr. Lennon went back into the studio, into what they call the cutting room, and he cut and supervised the cutting of what is known as the lacquer masters. This really is probably the most important part of the record-making process. You could destroy a whole album when you re making the lacquer masters if it isn't done right, and it is Mr. Lennon's practice -- and you will hear testimony to that effect -- that he supervises that on all of his albums.

That was finished on the 5th, and on the 6th, Mr. Lennon delivered to Capitol and EMI the parts necessary to make the rock and roll album.

Levy began advertising the "Roots" album on television throughout the country on February 7th and 8th, and Capitol released the rock and roll album on February 15th, and the plaintiffs sued shortly thereafter.

You heard Mr. Schurtman say that Mr. Levy had

manufactured thousands of records. As a matter of fact, they only manufactured 2,444 records, five hundred t apes. They sold 1,270 records and 175 tapes.

Also, you heard Mr. Schurtman say that the "Roots" and rock and roll albums are identical. They are not. First of all, two songs were eliminated from the "Roots" album and do not appear on the rock and roll album. Even those two songs had been changed by Mr. Lennon prior to their being eliminated from the album after he gave this tape to Mr. Levy, and there are other songs ont he album that are also on the "Roots" album that are entirely different.

Thank you, your Honor.

THE COURT: Mr. Prettyman.

MR. PRETTYMAN: Your Honor, I certainly don't want to impose on your time. On the other hand, in view of the importance of the case and the fact that Mr. Schurtman did receive a quite lengthy opportunity, both yesterday and today, to present the plaintiffs' side, I hope you will bear with me for just a moment, because I think it is important that you begin to listen to the testimony fully understanding the defendants' position.

As you know, I represent both Capitol and EMI, and for us, as I go along, there are three extraordinarily important dates here, which I am sure your Honor has made a

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note of.

The first date is October 8, 1974, when the alleged agreement was made over drinks at the Club Cavallero, and the second date is November 14th of the same year, when Mr. Levy received the 7-1/2 inch rough mix.

THE COURT: What is the term you used -- 7-1/2 rough or --

MR. PRETTYMAN: Seven and a half rough mix. That is the 7-1/2 i.p.s. which Mr. Bergen compared to the normal 15 inch tape from which you make masters.

And then the third date is January 30, 1975, the so-called turned-down date, when Mr. Seider came to Mr. Levy and said, "Capitol and EMI are not interested in this. You have no rights. You cannot go ahead with your album."

I think those are dates to keep in mind as we go along, not only through my presentation, which I will make as brief as possible, but through the testimony.

As you can see from the two presentations which have been made, Capitol and EMI, although they had these contractual rights with Mr. Lennon, were very much in the background of all of this that is going on now. They really knew practically nothing about all of this and really came into it only at the very end, when they learned that this other album was coming out and when they began to assert their

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legal rights and contractual rights.

However, we believed when we heard Mr. Lennon's story -- we believed him that no deal, no contract had been made. We believed him then and we believe him now. And let me just tell you why, and I will tick off the reasons for you.

Number one, the course of events:

As Mr. Bergen mentioned, before this club meeting ever took place, we had the whole problem of the Seider tapes and Mr. Lennon turns to Capitol --

THE COURT: No. The Spector tapes.

MR. PRETTYMAN: I am sorry. What did I say?

THE COURT: Seider tapes.

MR. PRETTYMAN: I am sorry. The Spector tapes. I apologize.

Mr. Lennon turns to Capitol to get those tapes back, and he says to Capitol, "Can you get them?" And Capitol worked very hard, and they did get them back, and they paid for them substantially, and they gave those tapes back to Mr. Lennon.

This has all happened before this October club meeting. All right.

The club meeting occurs. EMI and Capitol are not present. We have nothing to do with it.

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Then, after that, Mr. Lennon proceeds, in his usual fashion, to talk to Capital about the album that is coming out. You will hear testimony that Mr. Corey, our A. & R. man, was on the phone with him, talking about the album. We assumed it was coming along in the normal course. We began working up our various art pictures, and so forth, and we finally end up at the end of January in a long session with Mr. Lennon, where he put his fi al imprimatur on the whole thing and agreed to it.

Does it make sense, we ask ourselves. Does it make any sense whatever for Mr. Lennon to have two deals going on the same album at the same time? That is totally self defeating and makes no sense whatever.

So we ask ourselves, could he possibly have made a deal without telling Capitol anything about it, and not only not telling them anything about it but proceeding to put the same songs out with Capitol as he had always done in the past under his exclusive arrangement with them and at the same time have a second deal over the same album? It makes no sense.

Number two, Mr. Lennon knew he was under exclusive contract. He himself has mentioned many times in his own very colorful fashion that anything that comes out of his mouth is owned by EMI and Capitol. He was very much aware of

that, and at that club meeting he was sitting there next to his business advisor and attorney.

Does it make any dense t hat he would open himself up to a new lawsuit by Capitol and EMI by entering into an agreement in order to close out some old lawsuit? It makes no sense whatever to us.

The third factor is the nature of this so-called agreement itself.

Here we are. You will hear Mr. Levy testify that he made no plans for this meeting in terms of this package deal. He never thought of it ahead of time. He never thought it out. It never occurred to him. He arrives at the club; they are sitting there over drinks; it comes up, and he would have us believe that even though they can't agree who was there and even though they can't agree whether they even had dinner or not, and even though you find that the testimony is all over the lot in terms of who said what or what was supposedly agreed to or whether some subject was mentioned, Mr. Kahl can't agree with Mr. Levy, and the others don't agree with each other.

Despite all of this confusion about a deal involving, he claims, four million albums and tapes -- which is what he told Mr. Lennon he was going to sell for him -- you are talking about a gross of some twenty million dollars; you

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are talking about worldwide sales, you are talking about one of the finest performers in the musical business -- he is going to ask you to beleive that that deal was made and concluded in the course of one evening, not only without a contract, not only without a contract not even contemplated but without a single note, a memo to the file, a memorandum agreement.

But everybody left at the end of this dinner, this evening with drinks, and they went on their way, and the other proposition was done away with, the copyright dispute was gone, and we now have an enforceable agreement in the law.

He does not consult his attorneys, even though he was aware that Mr. --

THE COURT: When you say "he", you mean Mr. Levy?

MR. PRETTYMAN: Mr. Levy did not consult his attorneys after that October 8th meeting about whether this would be legal. He did not go and look at the contracts between Capitol and EMI and Apple and Mr. Lennon, although he knew -- you will hear him say on the stand t hat he knew about the exclusive arrangement. He did not ask for an attorney's opinion or look at the contracts or get his attorneys to look at the contracts. Instead of that, he

simply proceed apace --

THE COURT: Was there any -- this is something I should have asked Mr. Schurtman -- was there any effort to prepare drafts of contracts at any point?

MR. PRETTYMAN: No, sir. They never thought of this before this evening.

THE COURT: Was there any effort to prepare any drafts?

MR. SCHURTMAN: There were no drafts. There was some discussion about putting the agreement in writing at a later point.

THE COURT: After the meeting, did Mr. Levy go to --

MR. SCHURTMAN: No. Not at that point.

THE COURT: At no time was there an actual working on drafts; right?

MR. SCHURTMAN: No.

THE COURT: Okay.

All right, Mr. Prettyman.

MR. PRETTYMAN: Yes, your Honor. Next point.

Number four: the nature of the tape itself. I won't go into this, because Mr. Bergen has already made the point. But you will find from the testimony that it simply makes no sense whatever that when Mr. Lennon sends a 7-1/2

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inch tape to Mr. Levy, who has some songs on it and who obviously would like to listen to it, it makes nso sense whatever to Capitol and EMI, because they make albums, masters from tapes, of course, themselves for major artists -- it makes no sense whatever that an album could be made from a 7-1/2 inch tape for that artist. No way is that artist going to allow his performances to be put out from a 7-1/2 inch tape.

Next, the sequence of events following the club meeting and following the receipt of the tape:

You remember, I mentioned November 14th. You will hear testimony from Mr. Levy that in the normal course, when somebody gets a finished tape they spend three or four weeks, and they get their masters on, and they get all their TV time lined up, and they get their jacket done and all the rest of it, and then you put the thing out.

What happened here? He gets the tape on November 14th. He sits there with the tape until January 30th, over two months, and nothing happens. He doesn't do his picture or his jacket or his lacquer or his stamper or his mother or any of the things that go into the technical side of getting the thing pressed, and he doesn't do the business about your commercial or buying your TV time or anything else.

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He sits there for over two months, and suddenly, on what I call the turn-down day, when he finds out that whatever hope that he might have had at one time that he could have gotten permission to put this thing out, whatever hope is certainly and finally gone. That is the point where he suddenly turns around and rushes out with this album, and he puts it together with great alacrity. He puts out an album, which you will see, which you could not believe that any artist would approve and which, of course, Mr. Lennon did not approve.

He puts out this thing and puts it on the market quickly, trying to get in ahead of what he knows is the authorized version, which is the one owned by Capitol.

Let me just say that even under Mr. Levy's own version -- and you heard it from Mr. Schurtman -- even if he doesn't agree with us about Capitol's permission, you heard Mr. Schurtman agree that everybody said, "Well, they better get EMI's permission."

The reason for that is, your Honor, no matter what you can say about the Capitol-Apple agreement -- and we will show you there is no hole in that agreement, that that is a perfectly valid agreement -- but no matter how much argument you have in that agreement, there is no hole in the EMI agreement. That EMI agreement is as solid as a rock,

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and you better believe they knew they had to go get EMI's permission to put this out, but they never got it. They don't claim that they got it.

EMI never gave it, and they don't claim that they got it. They claim that somehow Mr. Seider came back at some point for reasons they never explained and said, "Well, I don't think you really need it. Go ahead." And, finally, we believe Mr. Lennon, because the four people who were there that night at the time of the alleged deal that we have listened to, that is, Mr. Lennon, Mr. Seider, May Pang and Bernard Brown, all tell us substantially the same story, and that is that no deal was made.

And when we find that Mr. Kahl and Mr. Levy cannot even agree between themselves about what the deal is, when we put that together, it is inconceivable that you could have an enforceable, legal agreement at the end of that evening.

And I want to stress to you, your Honor, that they do agree that the deal was made that night. They don't contend that there were a lot of left-overs and tidbits and things to be cleaned up. Time and again in his deposition Mr. Levy said that at the end of the evening on October 8th the deal was made.

I will go into, obviously in the proof, your Honor,

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more about the contracts. I will not do so now. I will simply say for all of these reasons and others, we believe Mr. Lennon when we said no deal was made.

THE COURT: Will you have any?

MR. GRUMBACH: About five minutes.

THE COURT: All right. We will recess now until two-fifteen, and we will hear Mr. Grumbach, and then we will proceed with the proof.

(A luncheon recess was taken.)

MR. GRUMBACH: Your Honor, my name is George J. Grumbach, of Cleary, Gottlieb, Steen & Hamilton, and I represent the defendant Appel Records, Inc.

I will try to honor my promise before we left to be brief.

Apple Records is a New York corporation. Indirectly, it is owned in equal quarters by each of the four performers who were once the Beatles: John Lennon, Ringo Starr, Paul McCartney and George Harrison.

There is an issue in this case that Apple Records, Inc, through John Lennon as president, entered into an agreement at the Club Cavallero on October 8th. The assertion has been, until Mr. Schurtman's opening statement yesterday and again today, consistently in the pleadings in this case that the only person who represented my client, Apple Records, Inc., was Mr. Lennon himself.

For the first time yesterday and again today, Mr. Schurtman has said, "And then Mr. Levy testified yesterday that Harold Seider was acting on behalf of Apple Records, Inc."

Now, I start my opening with that comment, because I think it is typical of other elements of this case, and I say it is typical because I think that what happens in a situation where you have an oral contract is that it is very

tempting to reconstruct that contract by hindsight. And I suggest that the evidence that you will hear, and particularly the cross-examination of the plaintiffs' witnesses, Mr. Levy and Mr. Kahl, will show that there was no deal, to begin with, but that when the other evidence in the record came in from sources which Mr. Levy and Mr. Kahl could not effectively refute, the evidence changed, and it developed, apparently, that Mr. Lennon did not say words even under Mr. Levy's own version that amounted to a contract, that there were no loose ends, that Mr. Lennon had not, even under Mr. Levy's version or Mr. Kahl's version, mentioned, so it was necessary when they reread their versions of the story in their depositions to bring Mr. Seider in, because he was the person who Mr. Levy and Mr. Kahl said that they had discussions with on other subjects.

Of course, the problem was that up to this point Mr. Seider had n ot been claimed to be an Apple representative, and so yesterday Mr. Seider put on a new hat in this case.

I think that you will find as you listen to the stories and the cross-examination, that --

THE COURT: I tell you, I am not understanding your point.

MR. GRUMBACH: Let me explain it again.

Mr. Levy and Mr. Kahl were --

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THE COURT: I don't know that it is critical about a change of position, but as long as you bring it up -- I probably won't get very far pursuing that. If there are inconsistencies in testimony, I will get it at that point. Let's go to something else.

MR. GRUMBACH: The point that I just want to make is, I think it is very important to go through the story here and see how the story changes, because when one has an alleged oral agreement, one does not have a thing that was signed in writing on October 8th.

THE COURT: I will get that. If you show me inconsistencies in the testimony --

MR. GRUMBACH: I am just pointing out the first inconsistencies.

THE COURT: But I tell you, I don't quite follow this, because I don't --

MR. GRUMBACH: I think it is sufficient at the moment, your Honor, to just note that it is only today and yesterday that Mr. Seider is alleged to have spoken on behalf of my client. Mr. Seider is Mr. Lennon's --

THE COURT: Instead of whom?

MR. GRUMBACH: In addition to Mr. Lennon himself. Mr. Seider is not an employee, officer, director or shareholder of Apple Records, Inc.

THE COURT: Okay. I will keep that in mind in a general way, and you will illustrate that.

MR. GRUMBACH: I think that is all that is necessary.

THE COURT: All right.

MR. GRUMBACH: It is the defendant's position, of course -- and I am not going to repeat myself -- that there was no agreement, that the October 8th meeting was not a meeting of the minds; it was just a meeting among some people.

The defendants, of course, have shared the presentation of their opens. I am not going to repeat myself.

One point that I want to bring up on behalf of all the defendants, which you have not heard mentioned today, is the statute of frauds. It is pleaded in all of our answers.

The plaintiffs have taken the position that this agreement that they allege by its terms was capable of performance within one year.

THE COURT: We spoke about this yesterday off the record. If you are pleading the statute of frauds, you, of course, have to demonstrate you have an oral agreement. I guess that is conceded.

MR. BERGEN: No. An oral agreement is not conceded.

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MR. GRUMBACH: That it is not in writing it is conceded.

THE COURT: It is conceded that there is no writing; is that right?

MR. BERGEN: That is correct, but it is not conceded that there was an agreement.

THE COURT: You don't have to tell me that five times. I get that.

So there is no writing and, therefore, who has the burden to do what on the statute of frauds?

MR. GRUMBACH: It is an interrelated issue, your Honor, because the plaintiffs first must prove the agreement; they have the burden of proof on the agreement.

In the statute of frauds, of course, as to one element of the statute of frauds, there is no burden, because it is a conceded fact that there is no writing.

THE COURT: All right.

MR. GRUMBACH: Assuming that they meet their burden, they must show you that there was an agreement complete in its terms on October 8th.

We have to show you -- I believe it is our burden, but I want to reserve on that -- that the agreement by its terms was not capable of performance within one year.

THE COURT: Your position, subject to correction, is

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that the defense has to show that the alleged oral agreement falls within one of the categories of the statute of frauds; right?

MR. GRUMBACH: That is correct.

THE COURT: Okay. What category do the defendants claim it falls into?

MR. GRUMBACH: That it is an agreement not capable by its terms of performance within one year and not in writing.

As to the writing, of course --

THE COURT: Yes; we have that.

MR. GRUMBACH: But the subtlety of it, your Honor, is that the plaintiffs first have to show an agreement. We don't concede an agreement, so they have the burden of showing an agreement, and one of the elements of that agreement that they have to show is its duration.

If they prove a case, arguendo, and they show that the agreement was, by its terms. to continue for a period beyond a year, they have proven an agreement, but they have proven an agreement which is covered by the statute of frauds, and that's it.

THE COURT: But we are talking about the one-year provision, aren't we?

MR. GRUMBACH: That's right.

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THE COURT: What is your argument on that?

MR. GRUMBACH: Our argument on that is that if there was an agreement, by Mr. Levy's own testimony it was not to be performed within a year.

You will see in the deposition testimony that will be introduced of Mr. Levy that when he was asked about this agreement and its duration, he said, "It will go on for two or three years."

THE COURT: What particular statute -- a statute of what jurisdiction are you referring to?

MR. GRUMBACH: The law of New York, General Obligations Law, Section 5701.

THE COURT: What is the relevant language?

MR. GRUMBACH: That an agreement that is not in writing is not enforceable -- I am paraphrasing -- if it is not capable by its terms of being performed within one year from the date of its making.

We say that that one-year period begins to run -- I think the law is quite clear -- from the alleged date of the making of the agreement, specifically October 8, 1974.

So in order for the plaintiffs to prevail here, they have to show an agreement, that it was actually an agreement, and then they must show that it was capable of being performed --

THE COURT: Let us get to this one-year thing. What is it that makes it incapable of being performed within one year?

MR. GRUMBACH: First, we say that by its terms it was not capable of being performed within a year.

THE COURT: What is the time term you are referring to?

MR. GRUMBACH: According to Mr. Levy's testimony, which is what I rely on, because we say there was no agreement --

THE COURT: All right. You don't have to keep saying you don't admit that there is an agreement.

I think by now, after some thought, I UNDErstand that. Now, let's pass that.

MR. GRUMBACH: Fine.

Two or three years is what we say, and certainly well over a year.

THE COURT: What is the provision? Does somebody say this agreement is to last two or three years or what?

MR. GRUMBACH: Yes, your Honor. I might as well just read it to you now and get it out on the table.

THE COURT: All right.

MR. GRUMBACH: I will read to you, your Honor, from Mr. Levy's deposition.

This was under examination by Mr. Prettyman, at page 128.

"Q Was there any termination date agreed to that evening in regard to the 'Roots' album?"

The "Roots" album, your Honor, is the title of the version that the plaintiffs eventually put out.

The question continues:

"That is, was there a specific period outlined during which it would be sold and an agreement reached that it would not be sold after a particular date?"

Mr. Levy answered:

"We had some discussion as to how long these campaigns run, and I said that the usual licenses are for two or three years -- two to three years.

"Q And it was contemplated, therefore, that the 'Roots' album would be selling perhaps during a two or three-year period?

"A Right, depending on --

"Q Even as to that, was there any agreement that it would actually terminate at any particular point in time, as opposed to what would normally be expected?

'a Two or three years."

At that point, Mr. Levy's counsel objected, and therd was no further testimony permitted on that subject,

and Mr. Levy, I think you will see later, came back at a later point in his deposition on redirect and tried to -- our characterization is that he tried to eat those words, because they destroyed his case.

We think that that is dispositive right there, subject to our belief that he did not rehabilitate himself and that the story was not entirely to the contrary of what he said on page 128.

THE COURT: Just so I don't oversimplify, let us assume for the moment -- I guess I should ask Mr. Schurtman this, but as long as you are on your feet, I will ask you -- let us assume just for the purposes of argument that there was an agreement which was not capable by its terms of being performed within one year. I take it there are other issues and contentions as to why the statute of frauds is still inapplicable.

That isn't the end of the story, just the terms of the agreement, is it? Is there a part performance claim or something like that?

MR. GRUMBACH: Our position is that that is dispositive.

THE COURT: Mr. Schurtman, maybe you are the one I ought to call on this.

Do you have an alternative theory?

MR. SCHURTMAN: No. Part performance would not take it out of the one-year statute of frauds.

The reason we are putting in evidence of part performance is to show that there was in fact an agreement and that the parties acted pursuant to it.

The statute of frauds provides that if an agreement by its terms was incapable of being performed within one year, then it is barred unless it is in writing, and part performance would not cure that bar.

On the other hand, as we show in our briefs, the courts have interpreted that provision to mean that if it was possible for the agreement to be performed in less than one year, then it does not have to be in writing.

THE COURT: Just on the point of law I asked you about, your position is that if the Court were to find that this was an agreement which was not capable by its terms of being performed within one year, you would have no other alternative defense on the statute of frauds point; right?

MR. SCHURTMAN: I think that is correct, your Honor.

THE COURT: All right.

You can go ahead, Mr. Grumbach.

MR. GRUMBACH: Just one comment. I would stress the words "by its terms." Mr. Schurtman would stress the

word "possible". But I think if you have an agreement for two or three years, even if by leaping up and down and doing handsprings you can get it done sooner, if the parties agreed on two or three years, then that is the agreement.

THE COURT: All right. I understand.

MR. GRUMBACH: Just one other point that I want to bring to your Honor's attention that applies strictly to Apple Records, Inc., and that is that we have a defense of lack of consideration.

The plaintiffs take the position that the consideration that flowed to Apple Records Inc. was (a) forbearance to sue Apple Records for breach, alleged breach of the '73 settlement that was entered before your Honor -- that is number one -- and, two, royalties.

As to the first, we say that if you look at the settlement that was entered into before your Honor, our client, Apple Records, had no duties, because it was Mr. Lennon who was to record the three copyrighted songs of Big Seven, and then he was to use his best efforts to get Apple Records, a California corporation, to license three recorded song tracks, not by the Beatles but owned by that company, to Mr. Levy's companies, or, in the alternative, if he could not or chose not to get Apple Records to license the three master tracks, then Mr. Lennon was obligated to record two

additional copyrighted compositions owned by Big Seven.

THE COURT: I think your argument is, there is no consideration flowing to Apple Records. Is that what your argument is?

MR. GRUMBACH: I am saying for the October 1974 alleged new deal, there was no consideration as to forbearance to sue Apple for breach of the first settlement, because Apple couldn't have been sued.

THE COURT: I just want to get your general proposition.

Is it your argument that there was no consideration flowing to Apple Records which would be the b asis for a contract by it? Righ?t

MR. GRUMBACH: Correct.

THE COURT: Nobody has argued that there would not be consideration flowing to Mr. Lennon?

MR. GRUMBACH: I don't speak for Mr. Lennon.

THE COURT: But you are saying that Apple Records would have this independent out?

MR. GRUMBACH: That is right.

I was just explaining the first element of that, and that is that one of the alleged bases of consideration was that Mr. Levy's company, Big Seven, gave up its right to sue Apple for the first settlement.

I say they didn't give anything up in suing Apple, because they had no obligation. It could not reach the first settlement, and, therefore, suing Apple would be no more than colorable.

You can file a pleading, but it won't withstand any testimony.

THE COURT: You are the victim of being last in line, and let's not get into this. These are matters of detail. Let's go on with our evidence, please.

MR. GRUMBACH: The second element is --

THE COURT: If there is any problem, we can get to the problems of Apple's position on consideration well down the line at a later point, but let us not elaborate on that.

MR. GRUMBACH: And let me just say that the other issue is alleged payments of royalties to Apple, and I think you will find that the evidence is that until now there has been no testimony that Apple was to get royalties; it was Mr. Lennon who was to get the royalties for the alleged new deal.

THE COURT: Okay.

MR. GRUMBACH: Finally, the last point that I would like to make is that we take the position that it is incredible to assume that this agreement was made --

THE COURT: All right. That is repetition.

MR. GRUMBACH: And if I may just make one observation on that, the plaintiffs are asking your Honor to, in effect, say that at the Club Cavallero on October 8, 1974, they took the transcript of the settlement that was arrived at before you and the letter agreement confirming it, and that, metaphorically but no less accurately speaking, that was torn up at that cocktail meeting.

THE COURT: Okay. Thank you very much. Now let's have the evidence.

MR. SCHURTMAN: I call Mr. Levy.

M O R R I S L E V Y , called as a witness by the plaintiffs, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCHURTMAN:

Q Mr. Levy, where do you reside?

A R. D. --

THE COURT: You are going to have to make a special effort to speak loudly. Everybody in the courtroom must hear you, and the acoustics are not all that good.

THE WITNESS: I have a kind of a husky voice, too.

THE COURT: And you have a husky voice. If you would be helped by having a glass of water, we will get that for you.

If any one of the lawyers wishes to move up to the jury box and take notes, you are welcome to do that, or anybody else may move to the jury box, because I think this witness is going to be a little hard to hear.

All right. Do your best, Mr. Levy.

THE WITNESS: I will try.

Q Where do you live?

A R. D. Gant.

Q Where is R. D. Gant?

A In Columbia County, upstate New York.

Q Is that where your farm is located?

A That's correct.

Q Do you also have an office in New York?

A Yes, sir.

Q How old are you, Mr. Levy?

A Forty-eight.

Q And, very briefly, what is your educational background?

A Sixth grade.

Q Have you had any formal education beyond the sixth grade?

A No, sir.

Q How long have you been in the music business?

A About thirty years.

Q And can you describe briefly your history in the music business?

A Going back to the '40's, I used to book talent, run concert tours, run concerts in Carnegie Hall for jazz shows, put the talent for Birdland --

Q Would you speak up a little?

A During the '50's I was involved with Alan Freid and rock 'n' roll packages. I get into the publishing business --

THE COURT: One think that is going to help us is if you t-lk more slowly and don't run your words together. I am sitting here, a yard from you, and I am not even getting it.

What did you do in the '50's?

THE WITNESS: I was involved with rock 'n' roll shows, and I started a record publishing company in the early '50's and a record company in the early '50's, and I have been in the recording and publishing business since.

THE COURT: Let me get that.

In the 1950's you started a record company?

THE WITNESS: That's correct, sir.

THE COURT: Did you say anything about a publishing business, a publishing company?

THE WITNESS: I started that in the early '50's.

Q Would you give the Court some of the highlights of your musical experience?

A We had some very big artists signed to Roulette, like Pearl Bailey --

THE COURT: Wait a minute. You mentioned Roulette. Would you tell me what Roulette is?

THE WITNESS: It is another record company that I own, sir.

THE COURT: When was that started?

THE WITNESS: 1957.

THE COURT: It is called Roulette Records?

THE WITNESS: Roulette Records, Inc.

Q What does Roulette Records do?

A It sells records in the normal retail channels, in comparison with the TV packages that --

Q Are you the president of Roulette Records?

A Yes, sir.

Q Who are some of the artists put out by Roulette Records?

A Pezrl Bailey, Count Basie, Savah Vaughan, Dinah Washington, Jimmy Rogers.

THE COURT: Okay. Let me get those.

Pearl Bailey, Sarah Vaughan --

THE WITNESS: Count Basie.

THE COURT: Who else?

THE WITNESS: Dinah Washington, I think I said.

THE COURT: All right. Go ahead.

Q Are you also the president of Big Seven Music Corporation?

A Yes, sir.

Q And what does Big Seven Music Corporation do?

A It is a music publishing company, specializing in musical copyrights.

Q Does that mean that it owns copyrights?

A That's correct.

Q Are you a controlling shareholder in Big Seven?

A Yes, sir.

Q And are you also the president of a company named Adam VIII, Ltd.?

A Yes, sir.

Q Are you a controlling shareholder of Adam VIII, Ltd.?

A Yes, sir.

Q When was Adam VIII organized?

A Three or four years ago.

Q Incidentally, Adam VIII seems to be an odd name. Can you explain what the reason for the name is?

A Well, I was going to have a partner in Adam VIII.

My son's name is Adam, and the "VIII" stands for a man who was going to be my partner, who has eight children. We couldn't figure out a way to get his initials into it.

Q What does Adam VIII do, Mr. Levy?

A It sells through television packages of various types of records through mail order and through retail fulfillment centers.

Q Can you describe to the Court in some detail how a television package of this type is put together and how it works? Let's start at the beginning. Where do the songs come from?

A Usually from various record companies all through the industry.

Q Do you obtain licenses from the record companies?

A Yes, sir.

Q And what do they license to you?

A The master.

Q What is a master?

A The master is the right to press records from the original tapes, but you don't actually use the original tapes. It's a copy of the original tape. But you have the right to manufacture.

I think somebody described this as a film -- the same rights as the negative of a film.

Q Do you take part in the actual recording of the songs when they are first put on the masters?

A While the other company did it? No.

Q Do you supervise the recording?

A No.

Q Once you get a license to a master, do they physically send you a copy of the master tape?

A Correct.

Q Do you pay any royalties in return for the license of the master tape?

A Yes, sir. Various deals. It may be a flat, it may be a royalty. There are twenty-five -- more, maybe -- various deals -- varieties of deals that can be made.

Q Once you get a copy of the master tape, what happens next in putting together one of these TV packages?

A Well, if it is a package containing -- we use the number 20 -- twenty different masters, they would be put on one tape, and they would go for a lacquer master. You would go into a studio and cut a lacquer master from them.

The lacquer master you would cut -- from the lacquer master you would cut what are known as mothers. From the mothers you would create stampers. The stamper is actually the part of it that goes to the plant --

THE COURT: Okay. Let's just slow you down a little

bit.

You take twenty songs from masters, and you put them on one tape; right?

THE WITNESS: Yes, sir.

THE COURT: Then you make a lacquer master?

THE WITNESS: This is the first disk that is made, your Honor.

THE COURT: And then what do you make after that?

THE WITNESS: By some process, from the lacquer master, they make what is known as mothers -- m-o-t-h-e-r-s.

THE COURT: From a mother you make what?

THE WITNESS: Stampers.

THE COURT: Is there something else after that?

THE WITNESS: The stamper is the part that goes into the presses that actually press the record, stamp the record out.

THE COURT: A stamper is used to make the press?

THE WITNESS: When it is put in the press, the pressing plant, that hits the vinyl and presses the record, your Honor.

THE COURT: I see.

THE WITNESS: It stamps the record out.

THE COURT: Then you have the records; right?

THE WITNESS: That's correct, sir.

BY MR. SCHURTMAN: (Continuing)

Q Who presses the records, Mr. Levy?

A For Adam VIII?

Q Yes.

A Various plants, from RCA to Columbia to Capitol. Plants all over the country.

Q They do the pressing under contract to Adam VIII?

A That's correct, sir.

Q When the records are distributed, they are usually in a cardboard cover or jacket?

A The sleeve -- the jacket.

Q The jacket. The sleeve is the paper on the inside of the jacket?

A That's correct. That's to protect the grooves.

Q Who prints these jackets?

A A printer.

Q And is this a printer who works under contract to Adam VIII?

A For most of the record companies in the industry, quite a bit -- a number of the record companies in the industry.

Q What I mean is, when Adam VIII wants a jacket made --

A It goes to a printer.

Q They make a deal with a printer to make these

jackets?

A That's correct.

Q How about labels?

A Labels are supplied by the plant. The actual little lable on the record is usually supplied by the plant. They give them label copy, and they will put that on the record and supply the label.

Q You are referring to the round center label?

A The little round slip in the center.

THE COURT: When you say "the plant", you mean the pressing --

THE WITNESS: The pressing plant, sir.

Q Do you also put out eight-track tapes?

A That's correct.

THE COURT: Just a moment.

When you say "you", what do you mean?

Q Does Adam VIII also sell eight-track tapes?

A Yes, sir.

Q And who manufactures the eight-track tapes?

A A tape duplicator.

Q And do these tape duplicators manufacture them pursuant to an arrangement with Adam VIII?

A That's c orrect, sir.

Q And who makes the labels, or the paper labels for

the tapes?

A They supply that. They get that from -- they supply that. It is part of the price.

Q Do you use television commercials in order to advertise these records and tapes?

A Yes, sir.

Q Who makes the television commercials?

A Well, we do the preliminary work on it.

Q Who is "we"?

A People in my office and myself. We try and get the -- start with the --

THE COURT: Is it Adam VIII, when you say "we" and your office?

THE WITNESS: Yes, sir. Yes, sir.

A (Continuing) We will do the original lay-outs, like, what are we going to use as copy and what is our selling pitch here? We will start with that. Then a company comes in and makes our commercial.

Q On what television channels do you broadcast or telecast these commercials?

A Hundreds upon hundreds across the country.

Q When you buy -- when I say "you", I should say Adam VIII --

A Yes, sir.

Q Does Adam VIII buy the time on television?

A We have a company that is called Hunt Media, that is completely owned by Adam VIII. It is an in-house agency to buy the time.

THE COURT: What is the name of the company?

THE WITNESS: Hunt Media.

THE COURT: And do they buy the time?

THE WITNESS: Yes, sir.

Q Can you describe to the Court very briefly what such a television commercial would be like, what it would say, just in general terms?

A It would depend upon the package, Mr. Schurtman. You would make a different type pitch if you were selling a country and Western package compared to a rock 'n' roll package, compared to an Arthur Fiedler package, which we had out, or a John Lennon package.

The commercial would try to appeal to the people who would possibly buy that particular package.

Q All right. Does the commercial give the name of the artist or artists?

A It would give the name of the artist, the selections, play as many cuts as possible of the songs that are in the album, five seconds, three seconds each, you know, to give a feeling of the music that is in the package.

Q You just used an industry term of art, Mr. Levy. What is a cut?

A A cut is also called the master. I'm sorry. We call -- if a record has twenty masters on it, we will say twenty cuts, because there is a little space between each one. That is an industry thing. I'm sorry.

Q Does the commercial state the price of the record that is being advertised?

A Yes, sir.

Q Does it also state a price if it is an eight-track cartridge?

A It suggests -- it has a price for the record and a price for the tape.

Q Are the prices generally different for the two?

A Yes, sir.

Q What is the normal range of prices for Adam VIII's packages?

A We go from $4.98 for a record up to -- I'm not quite sure, but I think the highest priced record package was $8.98.

Q Would that be a single album?

A No. That would be for a set of two, three or four albums. I think that was Arthur Fiedler and the Boston Pops Orchestra.

THE COURT: So a one-record offering, the normal price would be $4.98?

THE WITNESS: Approximately, yes.

Q And how much would an eight-track tape be?

A From $5.98 for one record -- I think that's about it for one record that would be similar. But if you have Arthur Fiedlers, again, where it was a two-tape set, I think we were charging $10.98 or $12.98. I'm not quite sure now.

Q Mr. Levy, we have sometimes been using the word "album". What is the difference, if any, between a record and an album?

A The same thing. It's a twelve-inch LP, except in the early days of the industry they used the word "album" to differentiate from the smaller records, seven-inch. Those are called singles now.

Q In other words, one of the smaller albums, which is 45 --

A Not an album, sir. No, no, no. A single record, like for jukeboxes. Kids buy them. Seven-inch records. We don't sell them.

Q Those are called singles?

A But we don't sell them at all on Adam VIII.

Q A long-playing record is called an album?

A Yes, sir.

Q Do the commercials tell the customer how to go about buying these albums or eight-track tapes that are advertised?

A Yes, sir.

Q What do the commercials generally tell the viewer to do?

A If it is a mail order package, they will tell them to mail their check or money order to either a local post office box that we make arrangements for, or directly to the TV station.

We also sometimes have mail call-in service, where we tell them they have to pay the COD charges. They can just call a phone number. It might be a Western Union number or an answering service in the town, and they call in there, and they will take their order, and they pay COD charges. Or, if we are running retail fulfilment --

Q Let us stick to mail order for a moment.

A Yes, sir.

Q What happens if a customer sends in his $4.98 check to a post office box or calls in by telephone? What happens next?

A If he calls in by telephone, the answering service or Western Unio.. that we retain to do it for us will get each day's orders together and mail them in to my office, to

Adam VIII's office. If it is a written-in, where they mail the check in, the TV, local TV station puts it in a package each day and forwards it to Adam VIII.

Q What happens next?

A We get from the various TV stations and answering services around the country, we compile it, we put it in a large sack and forward it out to RCA -- we use RCA for fulfilment in Indianapolis, and it goes out by special plane in the evening, to arrive in the morning at RCA.

Q You just mentioned RCA fulfilment. Is that a retail fulfilment center?

A No, sir. No. They have the largest -- probably one of the largest fulfilment centers for this type of business in the world.

THE COURT: Is that a formal name?

THE WITNESS: Fulfilment center? That is different from retail fulfilment. That is strictly mail order. They have a large place where the mail is processed and --

THE COURT: Let me just make sure. RCA has something called a fulfilment center? Is it called that?

THE WITNESS: It is called a fulfilment center. When we talk about RCA, it's about their fulfilment center.

TNE COURT: And you send all your orders out to them, and they actually fill them; is that right?

THE WITNESS: That's correct.

THE COURT: So they have a stock of records --

THE WITNESS: Of all our various products, and they will fill the orders for us.

Q So this is, in essence, a mail order fulfilment center?

A That's correct.

Q They fulfil the mail orders?

A That's correct.

Q You previously mentioned something called a retail fulfilment center. I take it that is different from what we have just called a mail order fulfilment center.

A That is correct.

Q Would you explain to the Court what a retail fulfilment center is?

A Retail fulfilment: say we are going to come into the New York market or the East Coast of the United States, but we will take the New York market to keep it simpler, with a package. We will make a deal with Woolworth's, W. T. Grant's, Two Guys from Harrison, Korvette's, Sears, Roebuck, Montgomery, Ward, chains of that size along the eastern seaboard.

We will make a deal with them that the merchandise will be hopefully on front register display. We guarantee them to spend money to advertise this product, and at the

end of the commercial, rather than say, as in the other commercial I described, "Mail your check", it will flash the store's name and say, "Go to this store and pick up the record," and a campaign like that lasts six weeks.

MR. GRUMBACH: Your Honor, may I object to the last part of that statement, which I suggest is volunteered. It is getting into the area that deals with the statute of frauds.

I don't mean to object often, but I think that the last answer about lasting six months --

THE WITNESS: Six weeks, sir.

THE COURT: Isn't that one of the issues we are trying?

MR. SCHURTMAN: I am going to ask him, anyway.

MR. GRUMBACH: I just suggest, your Honor, that it is objectionable as to being not responsive.

THE COURT: Oh, don't waste time on that.

Q Mr. Levy, how does a retail fulfilment center of the type I just described, differ in practice from a normal retail store, if at all?

A In normal retail, I as an independent manufacturer would send records to my distributor. He would have them on hand in what we call a catalog one-stop, or a store may order them. They will keep them for a year -- two years if it is

a good catalog item, and the records are out for a few years.

In this operation, the records are in and out of the stores -- our contract with the store is like to advertise for aix weeks. We may be in a week earlier. Unfortunately, sometimes even a week later, after the commercials start, we may be out within a week or two at the end of the commercials. They only keep us in, Mr. Schurtman, during the period of time that we are advertising.

THE COURT: When you say "they" --- possibly I missed something. Who keeps you in? Woolworth?

THE WITNESS: Yes. The deal, you see, your Honor, is --

THE COURT: Okay. I get it.

Q Are these special displays in the retail fulfilment centers?

A We try to get -- sometimes we are not successful -- to get what we call front register, that the merchandise will be where you are paying or checking out, so that the people will see it.

We supply the record in boxes that also say "As advertised on TV", and we try and get what we call good position in the store, by a front register.

Q Let me get the timing of these campaigns straight. Let me ask one preliminary question:

Is it possible to have a mail order campaign without also selling through retail fulfilment centers?

A Well, yes. We have that many times.

Q Is it possible to sell through retail fulfilment centers without also selling by mail order?

A We have done that also, many times.

Q And you also do both, simultaneously?

A Not simultaneously. In different sections of the country, we may start off a package on the East Coast retail fulfilment, do some mail order on the West Coast, because it makes the people more aware of it, and then six or eight or ten weeks later go out to the West Coast and do retail fulfilment.

We have done it that way, too.

Q Let me focus on the timing, Mr. Levy.

How long does a mail order campaign normally last from beginning to end?

A Six to nine months.

Q And how long does a retail fulfilment center campaign normally last, from beginning to end?

A Six months or less.

Q Do you also sell your packages abroad?

A We have licensed some packages up to Canada, and I made some special packages for England. But we don't actually

sell our packages in foreign countries ourselves.

Q You do it by way of licenses?

A We have done some licensing.

Q Incidentally, is Adam VIII the only company that handles these TV promotions?

A No. The biggest in-store company is K-Tel. The next largest would be Rondo.

In the mail order field, there is half a dozen large companies.

Q Mr. Levy, I show you Plaintiff's Exhibit 81 for identification. Can you identify that for the Court?

A That is a list of Adam VIII packages.

Q These are packages that were put out by Adam VIII for television promotion?

A That is correct, sir.

Q Can you tell the Court how many packages Adam VIII has put out in the last three years?

A This has a count of about twenty-three, but --

THE COURT: I tell you: if you come up closer, you are going to talk to each other quietly, and no one else will hear you.

A (Continuing) This one has about twenty-three titles on it, and there has been a few since this list was drawn up.

THE COURT: So that would be a total of what, would you say?

THE WITNESS: I would say twenty-five or twenty-six, your Honor.

Q And how many records and tapes have you sold as part of these twenty some-odd packages?

A It's an educated guess. About five, six million. I don't know. It's a guess, actually, but it's many millions, Mr. Schurtman.

Q When you say "a guess", is that your best information?

A Yes. Four million, five million. It could have been six.

MR. SCHURTMAN: May I offer this exhibit in evidence at this time.

THE COURT: Is there any objection to Plaintiffs' Exhibit 81?

Hearing no objection, I will receive it.

(Plaintiffs' Exhibit 81 for identification was received in evidence.)

Q Would you identify these? Not by name. Just tell the Judge what these records represent.

A These are packages that we have had out on TV promotions and in-store promotions.

Q These are Adam VIII TV packages that were put out in the past?

A Right, sir.

MR. SCHURTMAN: Your Honor, I realize we don't have a jury now, but I offer these in evidence.

MR. PRETTYMAN: Objection, your Honor. He has a list that he was offering.

MR. BERGEN: I object, also.

THE COURT: Do you have a particular reason for this offer?

MR. SCHURTMAN: May I ask you to look at one or two, your Honor, so you can get an idea of what these things are like.

MR. PRETTYMAN: I object unless they are in evidence, your Honor.

THE COURT: Why don't we have one or two? I just think they would give me some idea --

MR. SCHURTMAN: All right.

THE COURT: Why don't we have 82-A and 82-B as samples.

MR. SCHURTMAN: Fine. We will offer 82-A in evidence and 82-B in evidence.

THE COURT: All right. That is fine.

(Plaintiffs' Exhibits 82-A and 82-A for identification were received in evidence.)

MR. SCHURTMAN: We will keep the others available, your Honor.

MR. PRETTYMAN: Can we be informed as to what they are, your Honor?

THE COURT: All right. What are they?

THE WITNESS: That is forty original country hits -- that's A -- and B is a Billie Holliday Hits.

THE COURT: 82-A was marketed for $5.95; right?

THE WITNESS: Yes.

THE COURT: What does it have: one record inside or two?

THE WITNESS: That may have two. I'm not sure. It would be on top.

(Pause.)

THE WITNESS: Three, sir.

THE COURT: Three records?

THE WITNESS: Yes, sir.

THE COURT: Then 82-B --

THE WITNESS: Either three or four. It would be on there. I think the tag covers it.

THE COURT: That is really immaterial.

All right. Let's go on to something else.

MR. PRETTYMAN: May I see them, your Honor?

THE COURT: Yes; you certainly can.

MR. SCHURTMAN: Your Honor, I have here a collection of eight-track tapes which were also put out by Adam VIII.

THE COURT: One or two will certainly --

MR. SCHURTMAN: Let me suggest putting one in as 82-FF, which is Forty Hits by Arthur Fiedler, Boston Pops Orchester.

May I offer that in evidence?

THE COURT: Yes. I will receive that.

MR. SCHURTMAN: We are prepared to make the others available.

(Plaintiffs' Exhibit 82-FF for identification was received in evidence.)

Q Mr. Levy, let's go back to the year 1970. Do you recall a copyright infringement action commenced by Big Seven Music Corporation againstMaclen Music, Inc., Northern Songs, Ltd. and Apple Records, Inc., in the United States District Court for the Southern District of New York?

A Yes, sir.

THE COURT: How much of this do you feel you have to go into? If there was an ultimate settlement that you want to refer to --

MR. SCHURTMAN: That is going to be my next question, Judge.

THE COURT: That's it. All right.

MR. SCHURTMAN: I will simply ask for the record, your Honor, since my opening statement is not evidence.

Q What did the lawsuit involve, very briefly? What copyright infringement was involved?

A An infringement action against those companies on a copyright called Come Together, which we claim was an infringement of You Can't Catch Me.

Q Who had written You Can't Catch Me?

A Chuck Berry.

Q Who had written Come Together?

A That was Lennon and McCartney.

Q Did there come a time in 1973 when you worked out a settlement of this lawsuit?

A Yes, sir.

Q With whom did you work it out?

A With Harold Seider.

Q And who was Harold Seider?

A At that time he was a lawyer for United Artists, and he was doing some work for John Lennon.

MR. SCHURTMAN: Your Honor Plaintiffs' Exhibit 11 is a transcript of the settlement as it was read in open

court before your Honor.

THE COURT: All right.

MR. SCHURTMAN: May I offer it?

THE COURT: Is there any objection?

MR. BERGEN: None, your Honor.

THE COURT: I will receive it.

(Plaintiffs' Exhibit 11 for identification was received in evidence.)

THE COURT: I would like to go back and have the reporter read to me the question and answer about who negotiated the settlement.

(Record read.)

THE COURT: May I see Exhibit 11?

MR. SCHURTMAN: Your Honor, I am also going to offer, as Plaintiffs' Exhibit 12, a letter setting forth the terms of the settlement.

THE COURT: You do that, but I still want to look at the transcript.

MR. SCHURTMAN: Countersigned by Mr. Lennon.

(Pause.)

THE COURT: Any objection to Exhibit 12?

MR. BERGEN: None, your Honor.

THE COURT: All right. 12 is received.

(Plaintiffs' Exhibit 12 for identification was received in evidence.)

MR. SCHURTMAN: If your Honor please, 12 is a two-page letter which sets forth the exact terms of the settlement.

THE COURT: You don't need to characterize it. It is received, and if I can see it, I will take a moment to read that.

MR. SCHURTMAN: Certainly, your Honor.

(Pause.)

BY MR. SCHURTMAN: (Continuing)

Q Mr. Levy, what was the economic value of this settlement to Big Seven?

A Many hundreds of thousands of dollars.

Q In what way would you have earned many hundreds of thousands of dollars?

MR. BERGEN: Excuse me. May we have the answer read back. I didn't hear it.

THE WITNESS: Many hundreds of thousands of dollars.

Q In what way did you expect to earn many hundreds of thousands of dollars?

A We would have received mechanical royalties on every record sold. It would have enhanced the sheet music prospect of selling much more sheet music on the songs;

performance moneys around the world from all the various performance rights societies.

Also, when you get an artist of the stature of John Lennon recording a song, it gets exposed throughout the world, and a year later or six months later, it is inevitable that other artists start recording the song.

MR. PRETTYMAN: Your Honor, if he is passing to another subject, may I just object to that answer and ask that it be stricken, please.

I think that such a general statement, based on such generalities, has no probative value.

THE COURT: Objection overruled and motion denied.

Q I show you Plaintiffs' Exhibit 19 for identification. Can you identify this, Mr. Levy?

A It is a John Lennon album called "Walls and Bridges".

MR. SCHURTMAN: I offer it in evidence.

MR. BERGEN: No objection.

MR. GRUMBACH: No objection.

THE COURT: It is received.

(Plaintiffs' Exhibit 19 for identification was received in evidence.)

Q Mr. Levy, was "Walls and Bridges" the next John Lennon album that came out after the settlement agreement?

A Yes.

Q When was Walls and Bridges released?

A I believe September of '74.

Q And did Walls and Bridges contain three songs owned by Big Seven?

A No, sir.

Q Did it contain any songs owned by Big Seven?

A It contained a short version of "Ya Ya".

Q When you say "a short version", how long was the version of "ya Ya"?

A One minute. And it was not recorded with the regular studio orchestra that was used on the rest of the album.

Q How long is a song, normally?

A Two, two and a half minutes and up.

Q And who performed in this song?

A From what I understand from the line-up copy, John Lennon and his eleven-year-old son.

Q Did you regard this recording of "Ya Ya" as a proper recording, pursuant to your settlement agreement?

MR. BERGEN: Objection. It is irrelevant.

THE COURT: I assume it is just background for a later question. I will overrule that.

All right. Go ahead. Answer the question.

A No, sir.

Q Were you going to get your full royalties, regardless of how the song sounded?

A I would receive from Capitol Records or Apple Records, whatever label comes out, the full mechanical royalties of two cents per record sold, but it would not be performed in that sense, and it would do nothing for sheet music nor, I don't think, would that treatment ehance other performers to record the song.

Q Did the album contain the song "You Can't Catch Me"?

A No, sir.

Q I show you Plaintiffs' Exhibit 20 for identification.

A Yes, sir.

Q Did you authorize the sending of this letter?

A Yes, sir.

THE COURT: Are you offering that?

MR. SCHURTMAN: Yes. I am offering it in evidence.

MR. BERGEN: May we know what it is, your Honor?

THE COURT: Do you have a list? Did he give you a list?

MR. SCHURTMAN: Your Honor, these exhibits were all offered in the last trial.

MR. BERGEN: Okay. No objection.

THE COURT: All right. It would help -- I assume you are going to give a copy of the exhibit list which you have given me to counsel.

All right. Exhibit 20 is received.

MR. SCHURTMAN: Do you want us to exchange exhibit lists? Because so far, the defendants have indicated they don't want to show us their list. We do not exchange them, Judge.

THE COURT: We talked about that at some length. You are the one leading off today. Please give them your exhibit list.

MR. SCHURTMAN: Surely.

THE COURT: And I see no reason in the world why they should not give you a copy of their exhibit list.

MR. SCHURTMAN: I don't, either, Judge.

(Plaintiffs' Exhibit 20 for identification was received in evidence.)

THE COURT: Is there any objection to the giving of the lists to one another?

MR. BERGEN: Yes. If we are going to be cross-examining Mr. Levy with documents, I don't think that --

THE COURT: That is a special category, but I mean, I assume t hat you have some documents in mind for your case in chief and that you can --

MR. BERGEN: For you direct case, yes, your Honor.

THE COURT: And it seems to me what we talked about last night was just expediting as much as possible the exchange of documents, and that means a document list, inevitably and letting each other know what documents you are going to offer, so that people are prepared to object or not object without taking a lot of time hovering over these things in the courtroom and reading them, which is a total waste of everybody's time.

If you have a few documents that you feel in good conscience you need to hold back for cross-examination, I mean, that is obvious: you hold them back, but I am sure that would not be all the documents you are going to use.

All right.

MR. SCHURTMAN: Mr. Kanzer, will you hand our list to the defendants, please.

THE COURT: Now, what is Plaintiffs' Exhibit 20?

MR. SCHURTMAN: Let me identify 20. It is a letter --

MR. PRETTYMAN: Excuse me. May I have mine?

MR. KANZER: I am not sure I have enough copies with me at this point.

THE COURT: Let's move on.

MR. SCHURTMAN: Plaintiffs' Exhibit 20 is a letter

from an attorney named William Krasilovsky to Mr. John Feigenbaum, at the Marshall, Bratter firm, "Re: Big Seven v. Maclen".

THE COURT: What is the date?

MR. SCHURTMAN: September 6, 1974.

THE COURT: All right. It is received. It has been marked, hasn't it?

Who made up these tags?

MR. SCHURTMAN: We did, your Honor.

THE COURT: I must say they are not very good.

MR. SCHURTMAN: I appreciate that.

THE COURT: You start out, and presumably it is being marked for identification, and then if it is received in evidence you can X out the identification mark, and it is received.

I don't even know how to handle these tags.

MR. SCHURTMAN: If you would cross out "For Identification", then it is in evidence. That is the way Judge MacMahon wanted it, according to his clerk.

THE COURT: All right. I take back everything I said.

MR. SCHURTMAN: We had pre-marked them for the trial before Judge MacMahon.

THE COURT: All right. Let's go ahead.

BY MR. SCHURTMAN: (Continuing)

Q Mr. Levy, was Mr. Krasilovsky your attorney in the case of Big Seven against Maclen Music?

A Yes, sir.

Q And did you authorize him to send the letter which has been received as Plaintiffs' Exhibit 20?

A Yes, sir.

MR. SCHURTMAN: I next offer Plaintiffs' Exhibit 22 for identification, which is a letter dated October 4, 1974 from Mr. Krasilovsky to Mr. Feigenbaum of Marshall, Bratter.

MR. BERGEN: No objection, your Honor.

THE COURT: What is the number on this?

MR. SCHURTMAN: Exhibit 22.

THE COURT: All right. Received.

(Plaintiffs' Exhibit 22 for identification was received in evidence.)

MR. SCHURTMAN: May I ask the Court to look at Plaintiffs' Exhibit 22? It is very brief.

THE COURT: Yes.

(Pause.)

THE COURT: Can I have 20 again, please.

(Pause.)

MR. SCHURTMAN: Your Honor, we have extra copies.

Would you like extra copies for your own use?

THE COURT: Yes, particularly these letters. This will help very much.

All right. Go ahead.

MR. SCHURTMAN: Could I have the witness look at Exhibit 22?

THE COURT: Yes. I will give the witness both letters.

Q Mr. Levy, look at Plaintiffs' Exhibit 22.

A Yes, sir.

Q After that letter was sent, what happened next in connection with this settlement?

A Mr. Seider called me.

Q He telephoned you?

A Yes, sir.

Q And can you relate to the Court the conversation?

A He suggested we get together. He agreed that there was a breach of the agreement. There was some explanations to be made about it, and I said to him, "If you want to have a meeting, I want to have a meeting with the principal, John Lennon, there, too, so it doesn't get into carrying messages back and forth," because I considered this a very serious breach of our agreement.

Q Would you keep your voice up, Mr. Levy.

A Yes, sir. I will try.

Q And did Mr. Lennon agree to come, were you told?

A Mr. Seider called me back and said he would arrange the meeting with Mr. Lennon, himself and myself.

Q And did such a meeting take place?

A Yes, sir.

Q When did the meeting take place?

A October 8th.

Q Of which year?

A 1974.

Q And where did the meeting take place?

A Club Cavallero.

Q Where is the Club Cavallero located?

A 58th Street between Madison and Park.

Q What is the Club Cavallero?

A It is a private club that served at that time lunch, dinner and supper.

Q Are you a member of that club?

A Yes, sir.

Q At what time of day or evening did the meeting begin?

A Eight-thirty, somewhere in that neighborhood. Early evening.

Q Who was present at this meeting?

A Harold Seider, John Lennon, May Pang, Phil Kahl, myself and later, I am informed, Mr. Brown. What's his name?

Q Bernard Brown.

A Bernard Brown.

Q Mr. Levy, you had previously testified that your recollection was that Mr. Brown was not present.

A That was my recollection at the time that I testified, Mr. Schurtman, and I still can't really place him there, because he did not get involved in any conversations with what was going on, or I don't believe he was there most of the time. I really don't.

Q Who participated in the actual discussions?

A Mr. Seider and myself and John Lennon.

Q You said Mr. Philip Kahl was there?

A Mr. Kahl did not participate too much, except when we got down to picking songs and throwing titles around.

Q You said Miss May Pang was there.

A Yes.

Q Who is Miss May Pang?

A John Lennon's secretary.

Q And who is Mr. Philip Kahl?

A He is vice president of Big Seven Publishing Company.

Q Did you have anything to eat at the club?

A We did. Later on in the evening I think we had something.

Q Something to eat?

A Yes.

Q Did you also have something to drink?

A Yes, sir. One or two drinks? It was not a heavy drinking night. As a matter of fact, I think somebody had a little wine, and there was a soft drink, and there may have been one or two scotches. It was not a drinking evening in that sense, even.

MR. PRETTYMAN: I can't hear it.

THE COURT: I'm sorry. It was not a drinking evening. It was not in that sense a drinking evening.

Q Mr. Levy, as best as you can, will you relate to the Court what was discussed that evening, beginning at the beginning? In fact, let me ask one preliminary question before you do that:

Had you known Mr. Lennon?

A I met Mr. Lennon a couple of times before.

Q When had you met him?

A The Beatles had used my house in Florida in, I believe it was, 1963, to go swimming, because they couldn't swim in the hotel that they were staying at. They would have been mobbed. And I met them a few years after that,

I think, with Harold Davidson at a private club in London.

Q When Mr. Lennon came in, did he recognize you? Did he indicate that he recognized you?

A I don't believe so, no. I don't think so.

Q In any event, you sat down at a table, and you started talking. Tell the Court what was said.

A We started talking about the breach of the other agreement. Mr. Seider and Mr. Lennon -- I couldn't pinpoint which said which at this point -- started explaining about the problems of recording with Phil Spector, how they only got their hands on the tapes back in July or June -- I'm not sure of that -- but that Phil was a little nuts. He used to come to the recording studio all bandaged up, and a revolver went off in the recording studio. There were all kinds of problems with the recordings.

Howard Seider said, "Morris, will a couple of hundred thousand straighten this out?"

I said, "No; it won't. I think it was worth a lot more than that there." And we laughed about that.

We got into talking about the package. Mr. Lennon said as far as he was concerned, it was a dead package for Capitol, because the year had gone by, the rock 'n' roll nostalgia thing had certainly cooled down in the last year, whereas if he had finished it a year ago he would have been

an innovator as far as doing a nostalgia package. A year later, it didn't have the appeal, he felt, to the critics, to the public and to himself.

The conversation stayed in this area for a while, and somewhere along the line I made remark, "Gee, that would be a heck of a package for TV promotion." We had at that time on the air a package with Chubby Checkers, that was selling for over a year, for a year, a year and a half, heavy numbers in the rock 'n' roll, and I mentioned that.

The idea like sparked him. He said, "That's a great idea. I really would like to do it, and I think this solves all kinds of problems. It gets Capitol their money back that would be down the tube, or down the drain, that they have laid out for recording, -ecause the master never would have come out."

He liked the idea when I explained to him about how in normal selling you go to radio stations and ask them to play the record or entertain them and hear that we actually put the artist in the living room of the house while they are watching television.

We had discussions about how many millions upon millions of people see these TV commercials, discussed what is spent on a big campaign. And he got very enthused, and he said, "Harold, I really would like to do this. I think

this is a great idea. I think this resolves all our problems here."

From that point on, when Mr. Kahl was there, we started talking about titles. I think -- I'm not sure if it was that meeting or another meeting -- he wrote down some of the titles that were in the can --

MR. BERGEN: Can we have who "he" is, your Honor, please?

THE WITNESS: Mr. Lennon I am talking about then.

A (Continuing) And we made arrangements that he wanted me to hear the Phil Spector tapes the following day, because I have been involved in making a lot of rock 'n' roll packages. He told me he respected my thoughts in rock 'n' roll in that area there and my knowledge.

We made arrangements for me to go to the studio to hear the Spector tapes that were already cut, and it was a very enthusiastic evening from that point on, and we discussed royalties, twelve per cent royalties to Mr. Lennon and --

MR. PRETTYMAN: Your Honor, may I interject at this point, sir?

We had a great deal of difficulty before Judge MacMahon in terms of "we discussed", "we chatted", "we did this", "we did that". We had a terrible time as to who said

what to whom about what.

If your Honor could direct him, so I won't have to get up and object for this type of testimony to be stricken, I would appreciate it.

THE COURT: Obviously, Mr. Levy and Mr. Schurtman, it is important to find out who said what.

If the witness cannot remember who said what, he has to say it in those terms. But I want to know his memory of the conversation.

I am repeating myself, but it is very important to the extent that you can remember, to tell me who said what. If you can't remember who said what, and your only memory is that there was a general discussion in some form, then you will have to tell me that.

Go ahead on that basis, please.

THE WITNESS: Well, the area that we covered --

Q Mr. Levy, in order to make sure we covered the prior points as to who said what, you say there was a discussion of the settlement agreement?

A I would say Mr. Lennon did most of the talking about what went on in the studio with Phil Spector, in that area, explaining --

Q Even before you get to that, sir, you said at the outset there was a discussion about the settlement agreement

as to the case before Judge Griesa.

Who said what with respect to the settlement agreement?

A That conversation was basically with Harold Seider.

Q All right. What did Mr. Seider say?

A That it happened -- it was unfortunate, and John was there, John would explain the problems with the recording. He said, "Would a couple of hundred thousand dollars settle this here?"

Q Who said that? Mr. Seider?

A That's correct.

Q Did either Mr. Seider or Mr. Lennon dispute that there had been a breach of the settlement agreement?

A No, sir. They were there for that.

Q When you said a few hundred thousand dollars would not settle it, to whom did you address that remark?

A To Harold Seider.

Q Was John Lennon sitting there when you said it?

A Yes, sir.

Q The discussion about the problems with the Spector rock 'n' roll album: who explained the problems?

A John -- Mr. Lennon did more explaining of some of the things that took place in the studio.

Q You said that somebody had said that a lot of

money had been spent on these tapes. Who said that?

A Mr. Seider told me about a lot of money being spent on the tapes. When we got -- the subsequent thing about how happy they would be, glad to get the money out, that was John Lennon.

Q Did anybody indicate how much money was spent on the Spector tapes?

A At that time, they told me $90,000.

Q Who is "they"? Which one?

A That was Harold Seider. He said that over $90,000 had been expended on the Spector tapes.

MR. PRETTYMAN: May I ask who "they" are or who "he" is who would be happy to get their money out?

THE COURT: I don't understand the question.

MR. PRETTYMAN: He said "they would be happy to get their money out", but I am not clear who "they" are.

THE COURT: He is just saying what was said.

(To the witness:) Just tell us what was said, Mr. Levy. If somebody said "they", they said "they". If they said "Capitol and EMI", they said, "Capitol and "EMI".

Do you get what I mean?

THE WITNESS: Yes, sir. Capitol and EMI would be glad to get their money back.

THE COURT: All right. Go ahead.

THE WITNESS: Capitol, yes. Actually, EMI -- no. Just Capitol.

THE COURT: Who said that?

THE WITNESS: John Lennon.

Q Did you explain the mechanics of a television campaign to anyone?

A Yes.

Q To whom did you explain it?

A Mr. Seider and Mr. Lennon.

Q During this entire conversation, were Mr. Lennon and Mr. Seider both sitting at the table?

A Yes, sir.

Q So when you said one thing to one, the other one was sitting there?

A That's correct.

Q And when one of them said something to you, the other one was sitting there?

THE COURT: This is really, I think --

MR. SCHURTMAN: No. I am trying to be meticulous, Judge.

THE COURT: Let's go on. We are really belaboring this.

MR. SCHURTMAN: I agree.

Q When you explained the mechanics of a TV campaign,

what did you tell them, briefly?

A We got into this course: Mr. Lennon was asking me some questions about the TV commercials. Mr. Seider asked me some questions about cost, and Mr. Seider told me that John Lennon's royalties were twelve per cent of the retail selling price. Then we started talking about how the deal would function.

Q All right. What was said -- was anything said about mail orders?

A Yes. The whole TV concept was what got Mr. Lennon excited.

THE COURT: Let's take a short break now.

(Recess.)

Q Mr. Levy, when you explained the mechanics of television merchandising, was there any discussion retail fulfillment centers?

A Yes. I explained to Mr. Seider and Mr. Lennon how retail fulfillment centers worked.

Q Was there any discussion about how long this mail order campaign or retail fulfillment center campaign would last?

MR. BERGEN: Your Honor, I just want to make one objection to Mr. Schurtman consistently leading Mr. Levy as to was there any discussion as to this, was there any discussion about that.

I mean, we are practically --

THE COURT: How would you suggest he ask the questions?

MR. BERGEN: I would like Mr. Levy to just tell us what happened during the meeting.

THE COURT: There has been some interruption and there was a suggestion by Mr. Prettyman which led to going back, and so I really think in order to get going again I won't know what else to do.

It would be nice to go through it without interruption, but we didn't.

Go ahead.

Q Was there any discussion as to how long such --

THE COURT: First of all, I don't think it is particularly leading. It can call for either a yes or no.

Okay.

A Yes.

Q Who said what to whom?

A I explained the retail fulfillment, how with most packages we broke the country up into three sections. We would run West Coast, Middle America and the East Coast and we would put the merchandise in one or two of them at the same time, saving one for what we call the clean up, and they would be in there for six weeks, we would get in there a week or so prior to the TV campaign starting, they would be in the stores while the TV campaign was running and the stores returned the merchandise to us at the end of the six weeks and then we would collect the merchandise that was returned and we would run the last section of the country or the next two sections, depending.

Sometimes we even ran the entire country at once if we had a giant package. And we would clean up the merchandise, refurbish it and ship it to the last section so we don't have too many over stocks left over at the end of the retail fulfillment promotion.

THE COURT: Did you say how long a typical

clean up would run?

THE WITNESS: It would be six weeks for each promotion, so it would be a maximum of -- if we ran it the longest --

THE COURT: I want you to tell me what you said. I don't want you to explain anything to me.

What, if anything, did you say to Mr. Lennon and Mr. Seider?

THE WITNESS: Our retail fulfillment, allowing a couple of weeks promotion in and out maximum with freight and everything, would be 18 and say six more weeks, so say approximately 24 to 26 weeks.

THE COURT: And you are saying you are positive you explained all this to Mr. Seider and Mr. Lennon?

THE WITNESS: Yes, sir, that we only stayed in the stores for six weeks because that is how long we stay in the stores.

The stores carry our merchandise only when we have a television campaign. They work on a small mark up.

Normally, a store works on a 50, 55 percent mark up on records and things like that.

Here most major chains will work as low as 25 percent on mark up. We get a very high price for our records because of the TV campaign.

THE COURT: I won't go into that.

You have to go back.

I think we are getting into a problem when we try to break this up.

What I have to know from you and the other witnesses is what was said at this meeting and I need to get it as complete as possible, I need to get it as much as possible in the order things were said, who said what.

Your attorney has asked you about what, if anything, was said regarding the length of time for promotions, right?

THE WITNESS: Yes, sir.

THE COURT: On that subject, did there come a point in the meeting where that subject was discussed or was it discussed here and there at times during the meeting?

How did the thing shape up?

THE WITNESS: That basically, your Honor, was discussed when I explained the retail fulfillment centers to them on exactly how it ran.

THE COURT: All right. Let us go back even a little farther.

I gather from what you have told me that the retail fulfillment center thing is part of your overall TV sales, right?

THE WITNESS: Yes, sir.

THE COURT: The other being the mail order, right?

THE WITNESS: That's correct, sir.

THE COURT: Going back to your meeting of October 8, did there come a time when you discussed with these gentlemen the overall TV sales campaign?

THE WITNESS: Yes, sir.

THE COUPT: Even though you are repeating, I want you to tell me, and you take it slowly -- in fact, Mr. Levy, I am going to ask you to go back to the very beginning of this meeting and I want you to take your time and I want you to tell me your best recollectionof everything that was said.

I am not interested in just hearing about what subjects were discussed, I want to know what was said about the subjects.

You can sit here for two hours. I want to hear what was said socially, I want to hear what you ate, what you drank, everything about that meeting, and I don't care how long it takes.

I will hear the same thing from every other witness. And do not rush. I just want to hear everything from hello on.

I don't mean I expect you to have a memory of every detail, but in words or substance I want to know everything you remember so I get the whole picture.

THE WITNESS: I'll try, your Honor.

THE COURT: Would you do that?

THE WITNESS: I certainly will.

When Mr. Lennon and Mr. Seider came into the club we --

THE COURT: Who got there first?

THE WITNESS: I believe Mr. Lennon and Mr. Seider arrived there first.

THE COURT: Where is this club again?

THE WITNESS: 58th Street between Madison and Park.

THE COURT: Okay, go ahead.

THE WITNESS: We said hello to each other and I was introduced to John Lennon.

THE COURT: Were they there when you got there?

THE WITNESS: No. I was there prior to them being there.

THE COURT: All right. I got confused.

You got there before Mr. Lennon and his party, right?

THE WITNESS: That's correct, sir.

THE COURT: Who was with you?

THE WITNESS: Nobody was with me at the time. Mr. Cahl was sitting with some other people. I was talking to some other people.

I frequent the club quite a bit, your Honor. I know everybody there.

THE COURT: But you had made arrangements for Mr. Cahl to be there with you, right?

THE WITNESS: I mentioned that we were having that meeting that evening.

THE COURT: And he was there and prepared to meet with you, right?

THE WITNESS: That's correct, sir.

THE COURT: So you and Cahl were there.

The next thing, Mr. Lennon and Mr. Seider come in, right?

THE WITNESS: That's correct.

THE COURT: And do they come up to you?

THE WITNESS: The headwaiter or Mr. Cahl came and got me and told me they had arrived.

THE COURT: So all four of you gathered?

THE WITNESS: We sat at the first booth as you come into the club.

THE COURT: All right.

Tell me the whole story of what happened.

THE WITNESS: We ordered some refreshments --

THE COURT: Who ordered what?

THE WITNESS: I don't know if Mr. Lennon was drinking or he ordered some white wine. I don't think he was drinking anything hard.

THE COURT: What did you order?

THE WITNESS: I think I had a scotch. I'm not sure what Mr.Seider had and I'm really not sure what Mr. Cahl had, your Honor.

THE COURT: All right.

Then what happened?

THE WITNESS: We started talking about the contract, the breach of the agreement.

THE COURT: Don't tell me what you started talking about.

Who said what?

THE WITNESS: That's very difficult, your Honor, in that sense, you know.

THE COURT: All right.

I am not trying to make it difficult. I just want you to be assured. You take your time.

In other words, did somebody complain or somebody congratulate or somebody say something? What was said?

THE WITNESS: That they were sorry that the --

THE COURT: Wait a minute.

Who is this? Is this you?

THE WITNESS: No. Mr. Seider explained that he was sorry about the breach taking place, that John was with him -- John Lennon -- and he would explain some of the problems they had.

At that point we talked about the problems that they encountered with respect --

THE COURT: Wait a minute. Just take it easy.

Who said what? Mr. Seider said Mr. Lennon would explain the problems.

Then who said what?

THE WITNESS: Then Mr. Lennon started telling me about the problems he had with Phil Spector.

THE COURT: What did you say about that?

THE WITNESS: That Phil Spector was crazy. He came to the studio with bandages around his head pretending he was in an accident once, a revolver went off in the studio, he started carrying a gun and came to the studio with a gun, and that the entire recording sessions were a disaster area, there was no stability, it was absolutely a clean screw up.

THE COURT: Then who said what after that?

THE WITNESS: Then I answered back. I said I knew some of the things that Phil had done.

We then got into lighter conversation.

I said I remember the time when Phil Spector was barred from flying because a few years -- he was not allowed on a plane for a few years because at one time, just before a plane was going to take off, it had taxied out to the runway and he suddenly looked at all the passengers and said, "You are all losers," and insisted that the plane be brought back.

Now, this was completely out of my head until we started to do this this way, your Honor -- then the plane would be brought back and he made the plane come back and they took him off the plane and he was barred from flying.

He has always done kooky things. And I told that story to John and Harold.

The discussion, basically, was about Phil Spector for the next few minutes.

THE COURT: All right.

Then after that who said what?

THE WITNESS: Then Mr. Seider made a remark, "Mr. Morris, would a couple of hundred thousand"-- and to be completely candid, the remark was not made -- was made in,

like, sort of a laugh-type thing. It was not, "Will you take $200,000?"

It was sort of off the cuff as -- my interpretation was, like, it was an off the cuff remark and was not a serious offer.

THE COURT: What did you say?

THE WITNESS: I rejected that. I says, "No. As a publisher, if you have copyrights recorded it would mean more money than that, plus the added value over the years to the copyrights and nobody in their right mind would take a settlement like that there with the deal that was just breached."

THE COURT: All right.

After that?

THE WITNESS: John -- Mr. Lennon started to explain how he loved the idea of the rock and roll package the year before. At that time there was a lot of rock and roll nostalgia music selling.

We talked about the American Graffiti, which I told him I was involved in helping get the musical score from American Graffiti. We talked about the Chubby Checker package, which I put --

THE COURT: I know it is hard for you, but I want you to try to avoid this "we talked about."

THE WITNESS: Right, I follow that.

THE COURT: Go one step at a time.

Mr. Lennon said that a year ago he had liked the rock and roll album idea, they were making a lot of rock and roll recordings, there was nostalgia, and then you began to get off on this "we" business.

What happened after that?

THE WITNESS: After all the heartaches we had with the album he was disenchanted with the whole idea.

He thought that the album coming out a year after the original concept, it was too long, that the critics would know it; he would not be a leader in the field, as he liked to be. He liked to be an innovator and creative, and at this point here he was more or less like a follower and he was not doing anything that was very original and he was displeased with the whole project at this point, that's why he completed the other album.

THE COURT: He said?

THE WITNESS: Yes.

THE COURT: Just take your time.

Who said what after that?

THE WITNESS: At some point there, I'm not sure, your Honor -- being under oath, I'm not sure of the next remark. I can only be general around the area.

I made a remark, "Gee, that would be a great package for TV."

THE COURT: Wait a minute.

What did you say about that?

THE WITNESS: I said, "Gee, that would be -- the package that you don't dig no more, you know, would be a great TV package."

THE COURT: What did you say after that?

THE WITNESS: At that point John said, "Then TV commercials are driving me whacky," he says. "But I guess they sell records."

I said, "They sell a lot more records than people realize."

THE COURT: All right.

THE WITNESS: John made a remark that this may be a solution to the whole mess.

THE COURT: All right.

After that who said what?

THE WITNESS: That this could possibly get -- by being a solution to the whole mess, he said this can get Capitol their money back, this would take dead masters that were not going to see the light of day and they could earn a lot of -- and they could earn the money back for Capitol, Appel would be happy, he'd be happy, I'd be happy.

THE COURT: All right. After that?

THE WITNESS: I then told John about how valuable this TV -- not that he needed it, I --

THE COURT: Don't tell me whether he needed it.

THE WITNESS: I qualified the statement.

THE COURT: I see.

THE WITNESS: In other words, not that he needed the promotion, but the Chubby Checker package that I had made -- now, this just comes back to me -- the Chubby Checker record that I had made, Chubby had not had a hit record in three years and his salary went from $300 a week to seven or eight thousand dollars a week, because these commercials go right to the heart of America through TV.

THE COURT: From 300 a week to what?

THE WITNESS: To eight, nine thousand a week without a hit record.

THE COURT: You are talking about money for Chubby Checker?

THE WITNESS: Yes.

In other words, your Honor, this would be in the sense of -- in our business, this would make a lot of sense, because if you don't have hit records during the period, an artist's price many times drops, and the remark was here without a hit record with TV commercials his price had gone

up in his night club engagements and his public appearances.

THE COURT: Go ahead with what you said.

You told Mr. Lennon about this increase in his --

THE WITNESS: About the artist value of Chubby Checker just for doing a TV commercial and I thought it certainly couldn't hurt him, although I did qualify it and say he really didn't need it as badly as Chubby did, being a diplomat.

THE COURT: What else was said?

THE WITNESS: John Lennon at that point was very, very much enthused about the project.

THE COURT: What did he say?

THE WITNESS: He says he loves it, he's going to do it.

THE COURT: What else?

THE WITNESS: Mr. Seider said to him, "You know, there is some permissions needed."

THE COURT: Go ahead.

THE WITNESS: John's remark to that was, "My contract expires in January of next year, of '76. EMI is not going to turn me down for anything I ask for."

THE COURT: Go ahead. What else did he say?

THE WITNESS: "Capitol and Appel would be glad to get the recording costs back."

He said, "It's an overall good situation. It cleans up the mess we got with Morris, it takes dead masters and makes them earn money and it's good overall and it will be the first time an artist is putting new recordings in that sense on the TV tube."

That came up then, too.

THE COURT: Go ahead.

THE WITNESS: I was then asked some questions about how budgets are arrived at by Mr. Seider, how much is spent on a television campaign.

I explained to him in mail order we use a CPO.

I will explain.

A CPO, sir, is a cost per order. What we do in mail order is, if we bought a thousand dollars worth of time, say, on WOR New York, each day the orders are counted so that we allocate what our cost per order can't go above, your Honor, and if it is costing out above a certain figure we drop the station.

THE COURT: Again, what did Mr. Seider ask you? Again, what questions did he ask you?

THE WITNESS: He asked me how the TV worked. I was explaining how we do the mail order with the CPO.

THE COURT: Let us go to that.

Is this or is it not the juncture at which you were explaining about the TV campaign?

THE WITNESS: Yes, sir.

THE COURT: Just go into that completely as best you remember.

What did you say about the TV campaign method?

THE WITNESS: That on the TV campaign we use a CPO.

He asked me what a CPO was and I went into an explanation about a CPO is cost per order. It is an abbreviation for that.

I explained to him how we worked CPO.

THE COURT: What did you say?

THE WITNESS: I said if we bought, say, a thousand dollars worth of TV time on a station and we allocate for a package that our TV commercial should not cost us 25 percent above the retail price so, therefore, on a $5 package we would like to get each order for approximately a dollar and a quarter, that if we were getting -- if we spent a thousand dollars and we got a thousand orders for the week, that meant each order cost us $1, we were below the CPO, we would renew that station for another week.

If we went to a dollar and a half we still might stay with a station even though we were above cost because

we were in a profit picture, but we watched each station that we were buying on a daily basis to see how many orders we get in on our TV advertising for mail order.

THE COURT: All right.

What else was said?

THE WITNESS: Then I explained the retail fulfillment centers to him.

THE COURT: What did you say?

THE WITNESS: How we ran the country, that we did it either three sections, one at a time, sometimes we did two sections and saved one section for a clean up and sometimes we ran the entire country in one short and just save a small market for a clean up.

I explained to him our costs on that there, how we got away -- which surprised him -- that we only gave a store of 25 and a maximum of 30 percent if they did the distribution.

What I explained to him was, like, if we shipped individual stores, we will give the stores a 25 percent mark up only, but if we ship a chain like Sears, Roebuck, who have a central warehouse and then they did the individual shipping to their stores which gave them a little additional cost we would give up to a 30 percent mark down on the merchandise and they either worked on either 25 or 30 percent

and we got a good price for our records.

And we should work as quick as possible because February was one of the best beginning of seasons, because on January 30 Woolworth cleans up all their merchandise in the stores. February 1st they restock again. That is inventory time for them.

John says, "Well, how many songs would be needed?"

I suggested to John --

THE COURT: Just a moment.

In your description to me just now you have not mentioned anything about describing the time and I don't want to trap you.

THE WITNESS: Your Honor, I did mention it then.

I explained the six weeks --

THE COURT: Let me ask you this:

Did you just describe in general basic terms or didn't you, about the mail order? Did you do that?

THE WITNESS: Yes. That's what I just said, the mail order and the difference in the retail fulfillment centers and how it is six weeks in each section of the country, that we might run two at once, one at a time individually across the country or run the whole three at once and save a small market.

THE COURT: Did you describe the time of a mail

order campaign that did not involve retail fulfillment centers?

What I am trying to find out is, did you explain to them the relationship -- I don't want to -- what did you say, even if you repeat it, what did you say to them about the mail order, the retail fulfillment, the timing, the relationship, that whole subject?

Are you with me?

THE WITNESS: Yes, sir.

THE COURT: What did you say? Give it to me again, the whole thing.

THE WITNESS: The same thing just now or there was one other --

THE COURT: You can repeat. I don't care about that. I want to hear all.

THE WITNESS: I also explained how sometimes --

THE COURT: No, don't start with also. Just hear me out.

I think I want you to go back and I want you to tell me what you told them about the TV campaign, the whole subject, as you told them.

Do you understand?

THE WITNESS: Yes.

THE COURT: And I don't care if you repeat what

you have already said today.

You go back and tell me everything you told them about the TV campaigns. Right?

THE WITNESS: Right, sir.

THE COURT: All right.

THE WITNESS: We started discussing the mail -- the in-store promotions.

THE COURT: The what promotions?

THE WITNESS: The retail fulfillment centers.

THE COURT: That is what you described first?

THE WITNESS: No, I think I described the mail order first.

THE COURT: Then tell me what you said about the mail order.

What did you say?

THE WITNESS: That the mail order -- we like to start off immediately with the mail order and that we would buy a lot of TV stations in the country.

While we were preparing for the retail fulfillment mail order it was very good to run, because all the TV commercials that were run with mail order, people who didn't --there were certain people in the country who would not buy a record, not write a check, won't buy anything mail order no matter what you offered them, but still the TV ads in the

beginning help the second campaign if you were going to do the retail fulfillment, and that when we ran the mail order how we wouldtry and cost out at 25 percent of whatever the package costs and that we did a daily check on that, that I used RCA for fulfillment.

I told them that RCA did a very good job on the fulfillment.

THE COURT: All right. What else?

THE WITNESS: That we could cover the whole country within a few weeks as far as buying the TV time and doing the whole thing, that we had enough staff to do that.

THE COURT: What else on this subject?

THE WITNESS: Then we talked about the retail fulfillment.

THE COURT: What was said about that?

THE WITNESS: I explained that sometimes we ran one -- that we broke the country into three sections. Sometimes we ran one at a time, sometimes we would run two and save one, sometimes we would run the whole three at once and just save a market; that the longest it takes was a couple of weeks to get the goods into the first section.

If we took the longest alternative it would be a couple of weeks to get the goods into the first section,

six week campaign, that they would start the second six-week campaign, get all the goods together, get it to the third market, which would take a couple of weeks, two, three weeks, a six-week campaign; that in 24, 25, 26 weeks at the outside if there were some problems we would be through with the retail fulfillment center campaign.

THE COURT: Did you give any time estimate or did you say anything about time with respect to the mail order campaign?

THE WITNESS: Mail order would go off when the retail fulfillment started, because you couldn't run them both at the same time. Mail order won't pay off if they could go to a store and get it.

THE COURT: Did you say anything about time in respect to --

THE WITNESS: In respect to mail order?

In respect to mail order I says it goes off the air the minute retail -- you can't have both, because people don't buy when they can go to a store and get the benefit of the advertising.

Then Mr. Lennon -- we talked about the material in the package.

I suggestedhe record up to 20 songs, explaining to him that TV packages have to be tremendous buys, it is

not like a customer in a record store. I suggested he record up to 20 songs, that we have run 20 songs as a rule for one single record.

He didn't think it was necessary. He felt 12 was enough.

I came down to 18. He compromised up to 15 or 16.

I agreed that 15 or 16 of a Lennon would be good enough. I agreed to take 15 or 16.

We then talked about price.

He felt it should go out at $6.98.

THE COURT: "He" meaning Mr. Lennon?

THE WITNESS: Yes. This stuff here was discussed with Mr. Lennon.

THE COURT: $6.98?

THE WITNESS: He felt it should go out at $6.98 and $8.98.

THE COURT: You mean the record and tape?

THE WITNESS: Yes.

I explained to him with TV buying you must have a tremendous price and that I felt $4.98 for a single record was as strong as you can go, $5.98 is as strong as you can go with a TV promotion.

He agreed with that, it would be a $4.98 and

a $5.98 package.

We then started discussing royalties.

Mr. Seider said, "You know, if you use any of the Spector tapes, there will have to be a royalty to fill Spector."

If I may, your Honor, I will give you some insight --

THE COURT: No.

THE WITNESS: Because --

THE COURT: I think it would be better if you finish up what was said at the meeting and don't worry whether I understand it.

You have just told me what was said and the terms that were spoken of as best you remember.

THE WITNESS: Depending on how many cuts of Spectors we used that there was a small royalty due him percentage-wise. It would be a very small royalty.

John said he was not going to use too many of his tunes anyway, he was not pleased with a few of them.

Then Harold told me, "John gets a 12 percent royalty."

I agreed that Adam VIII would pay a 12 percent royalty to John and whoever he has to take care of, and he agreed then to take care of Spector and Capitol and if they

had to be reimbursed for their recording costs --

THE COURT: Who agreed to?

THE WITNESS: Mr. Lennon. And Apple

THE COURT: I am sorry.

Who said this 12 percent would take care of an so forth? Was that Mr. Seider or Mr. Lennon?

THE WITNESS: No, Mr. Lennon.

In the discussion, he discussed in greater detail the royalties to Spector. We did discuss that in a little greater detail.

THE COURT: What was said on that? Who said what?

THE WITNESS: John said he would probably only use five or six of his tunes, he had a three percent deal with Spector for as a producer, and if he used about five out of 15 or 16 he would only be entitled to that pro rata of the 16, so it would be less than a one percent deal to Mr. Spector.

THE COURT: All right. Go ahead, what was said?

THE WITNESS: And he said he would take care of that.

THE COURT: Out of his --

THE WITNESS: Out of his 12 percent. And Capitol would be thrilled, they will probably get their recording

money back and Apple would be very happy, they will be making money on the deal, too.

THE COURT: Okay.

THE WITNESS: And it was a great way to clean up a mess.

We then talked about what I would supply.

I had explained the advertising to them already, so I was to pay for the jackets -- we were writing some numbers down, too, your Honor, which I said would be 28 and 10 cents a piece as we were talking about it.

THE COURT: Where were people writing numbers?

THE WITNESS: I believe on napkins and scraps of paper.

THE COURT: What numbers were written on napkins?

THE WITNESS: The 12 percent royalty was written on napkins. Then we wrote down what my costs would be.

THE COURT: What was written on the napkin about your cost?

THE WITNESS: The items that I would have to pay for.

THE COURT: And those were what? What was said about that?

THE WITNESS: That these are the items I agreed to pay for, your Honor.

The jackets, which we said eight to ten cents, and I explained that in a mail order jacket it could be a little cheaper because it is important to have it -- when it goes through the mail, the lighter it is the better so we really don't use the best weight jacket that we use in normal retail, so really the figure 8, because of weight factor, would change the postage rates if it was too heavy.

We then discussed pressing, which I agreed to pay. We figured it would be about 37 cents. We discussed while --

THE COURT: Who said the 37cents?

THE WITNESS: I did, and explained that the mail order would be about 27 cents because you don't need the poly and the retail would cost about 39 cents because you do need the poly when you go into retail fulfillment centers because the records are --

THE COURT: Wait a minute. You are talking about pressing, right?

THE WITNESS: Yes, sir.

THE COURT: And you said it would be 37 cents for mail order?

THE WITNESS: And 39 cents for retail fulfillment. You don't need the poly wrap.

THE COURT: What is poly?

THE WITNESS: If I can show you one of the records, your Honor.

Can I have one of the records, please.

(Handing to the witness.)

THE WITNESS: When a record is sent, this is a poly. In retail fulfillment, customers handle it so you protect the jacket.

In mail order it is mailed directly to the customer so, therefore, nobody touches it before the customer gets it so it would be two cents cheaper in the mail order on cost.

THE COURT: All right.

What else was said?

THE WITNESS: I would pay for making of the commercial, I would say for the TV advertising, I would pay the copyright owners of the songs.

There we got into some discussion about trying to get certain songs that he liked and --

THE COURT: Who said what?

THE WITNESS: John and I.

I suggested that when we were picking the songs, the additional songs for the album that we pick songs, if possible -- that it shouldn't interefere with the quality of the album, but if there was a toss up of two songs and one

was a publisher that was friendly that would give us a rate, to use that type of publisher, that certain publishers don't give a rate to anybody and certain publishers you can talk to and maybe get a rate for a cut like this. That came up at that point when we started talking about publishing.

THE COURT: All right.

What else was said that evening?

THE WITNESS: I am just trying to see if there was anything more on the costs, your Honor. I am trying to run it through my head.

THE COURT: All right.

(Pause.)

THE WITNESS: I think that's about it on the cost area.

Then we started talking about potential titles.

Now, here it would be very difficult, your Honor, to say Mr. Lennon said or I said, because --

THE COURT: You give it --

THE WITNESS: Because what happened here, your Honor, it was, like, more or less like a kaffee klatsch, A, what about "Party Doll"?

No, I don't think "Party Doll."

What about, you know, "A Thousand Miles Away"?

Nay. Speedo is a good song. Remember when the Cadillacs did that there?

It was not the type of conversation you could--

THE COURT: Who was suggesting?

Was Mr. Lennon throwing --

THE WITNESS: He would throw out a song once in a while, I would, Carl would, May Pang would. It was the type of conversation you couldn't say who said what.

THE COURT: So those four people were throwing out titles?

THE WITNESS: Right.

THE COURT: What was the up shot of that?

Did there come a time when that discussion, that throwing out of titles, came to an end?

THE WITNESS: Yes.

THE COURT: What was said at the time it came to an end?

THE WITNESS: Then Mr. Lennon suggested that I meet him at the studio the next day and hear the Spector tapes.

THE COURT: All right.

Then what happened?

THE WITNESS: Mr. Lennon said he was very happy about the deal we had made, he was thrilled, it was the

first time in months he really felt like working, he was tired of watching the tube and this was a very exciting project and it was going to be a ball for everybody.

Oh, there was also some discussion about -- I'm trying, your Honor, but there is something that I left out from backwards.

THE COURT: All right, you can go back.

THE WITNESS: There was some discussion about getting permission from EMI.

THE COURT: Who said what?

THE WITNESS: Mr. Seider started that, I believe, that "We got to get permission from EMI.for the foreign for sure," he was not sure about the American rights, if he needed permission or not.

I then told Mr. Seider, "You don't need permission in the U. S. for mail order with the Beatles, because I got screwed as far as that goes a couple of years ago."

Those were the exact words I used, because Alan Klein had called me in to make a package that he was going to give to Adam VIII of the first 20 some odd hits of the Beatles -- no, it was a two-pocket set, about 30 hits of the Beatles, the Formidable Years, hits like that, and I did the research work with Alan and we were talking about a deal.

Alan Klein, who was their manager then and ran

most of the show as far as business, told me at that time that permission was not needed from Capitol to do a mail order campaign in the United States.

That's the same point, to bring it back into context, that John made the remark, "Look, they are going to do anything I want anyway because we have got -- my contract expires January '76 and they are not going to turn me down on this and, besides, everybody wins with this deal."

THE COURT: All right.

What else was said?

THE WITNESS: We made arrangements to meet the next day.

We made a deal. We shook hands and we had a deal.

THE COURT: Is there anything else that happened or was said that night other than what you have told me now?

THE WITNESS: Your Honor, I couldn't -- I couldn't in all honesty say nothing else was said, either, because, really, I'm trying to put together in my head and tell it.

I think I've told basically most of what was said, but I, I couldn't swear to you that I didn't leave something out or -- in all honesty.

THE COURT: All right.

How long did the meeting last?

THE WITNESS: Two and a half, possibly three hours.

THE COURT: What time did it start? You had said about 8:30?

THE WITNESS: 8:30, quarter to 9, in the neighborhood of.

THE COURT: Did there come a time when you had any further rounds of refreshments or drinks or food or anything?

THE WITNESS: I think we may have ordered a very light -- some very light items a little later, your Honor.

THE COURT: Food items?

THE WITNESS: Possibly, yes. I think so. Something light. It was nothing -- and maybe another round of-- I'm not sure if it was Mr. Lennon or Miss Pang -- would not drink. They said, "I am not drinking." I know somebody had a coke. Somebody said they were not drinking. I couldn't tell you who. And somebody had some white wine, I think, and there was a scotch. I had a scotch.

THE COURT: How much did you have to drink?

THE WITNESS: Total?

THE COURT: Right.

THE WITNESS: One or two drinks.

Two drinks the maximum.

THE COURT: Scotch?

THE WITNESS: Yes. Two drinks.

THE COURT: You had two scotches?

THE WITNESS: I think so.

THE COURT: Okay.

Give me just a minute.

(Pause.)

THE WITNESS: Your Honor, as I am sitting here something else came to my mind that took place, too.

THE COURT: All right.

THE WITNESS: There was some discussion, also, about Mr. Seider going over to England to talk to Mr. Len Woods.

Then Mr. Seider said Len Woods was probably coming here in a few weeks and he would talk to him then.

THE COURT: Who said what on this subject of going to Len Woods in England?

THE WITNESS: Mr. Seider said he would probably be going over in a couple of weeks in reference to the foreign rights and whatever rights had to be -- that he definitely --

THE COURT: Let us not get vague on it.

THE WITNESS: No. That he definitely know -- Mr. Seider definitely said to me then on the foreign rights he knew he had to clear it with EMI and he should go over to London to talk to Len Woods.

Then he said he heard Len Woods was coming here in a couple of weeks, he would wait a little while and see about that there.

THE COURT: Is there anything else you recall about that conversation?

THE WITNESS: I'm trying to think about it, your Honor.

(Pause.)

THE WITNESS: Your Honor, would it be possible for me to read my testimony of today and see if there is anything that I left out?

THE COURT: No, no.

You and your counsel can handle that, but I am just asking you a question now.

Is there anything else right now that you recall or have you finished with all that you remember now about that meeting?

THE WITNESS: I think that's about it, your Honor.

THE COURT: All right.

We made a meeting to meet the next day.

THE COURT: Mr. Schurtman.

MR. PRETTYMAN: Your Honor, if you are going to continue with cross examination, may defense counsel have three or four minutes before you proceed?

THE COURT: What do you mean cross examination? He is still on direct.

MR. PRETTYMAN: I am sorry, I mean direct examination.

Can we consult for a few minutes?

THE COURT: No. We are going to adjourn for the day in a very few minutes.

You go ahead for a little while, Mr. Schurtman.

MR. SCHURTMAN: Your Honor, I don't want to step on any toes.

As I understand it, when the witness says he has exhausted his recollection, it is proper for counsel even on direct, to suggest topics that may have been covered without in any way suggesting an answer.

THE COURT: In a proper way, of course.

MR. SCHURTMAN: All right.

(Pause.)

THE COURT: All right, Mr. Schurtman, you go

ahead.

BY MR. SCHURTMAN:

Q Mr. Levy, was anything said about what would happen to the old settlement agreement?

A Oh, yes, I'm sorry.

That would be -- I would not pursue any default on that.

Q At what stage of the conversation was that said and by whom?

A About two-thirds through when we sort of started to get into finances, like what the costs were and things like that there, around that area.

Q And who made the statement, Mr. Levy?

A Mr. Seider says, "Well, what happens with --"

I said, "We will forget about it. This is a better deal anyway."

Q Was anything said about who would select songs to be used in the album?

A Mr. Lennon would have complete -- on the selection, we would submit songs to him as we kicked around, we would get -- yes, we would get the original old records -- I forgot that before -- we would get the original old records for Mr. Lennon so he can listen to the old hit version of the nostalgia song.

Q Who said that?

A He wanted them, and I told Mr. Cahl to get a list together to get the old hits by the old artists so that Mr. Lennon could listen to it.

Q When you say you told Mr. Cahl, did you do so in Mr. Lennon's presence?

A Yes.

And he instructed May Pang if she got a list to get to get it to Cahl and May Pang and Phil Cahl were in constant contact after that night.

Q Forget about what happened after that.

Did he instruct Miss May Pang to get together with Cahl at that point?

A Yes, sir.

Q Was anything said on the subject of whether you or your companies would have exclusive rights during the television campaign?

A Yes, there was.

MR. BERGEN: Your Honor, I am really going to object to Mr. Schurtman.

THE COURT: No. Objection overruled.

A Yes, there was some conversation.

Q Who said what and when?

A While we were talking about the marketing thing,

I explained to Mr. Seider -- he made a crack, "Would this have to be exclusive?"

THE COURT: Seider said what?

THE WITNESS: I explained to him this would have to be exclusive, and the reasons being --

THE COURT: No. I'm sorry.

THE WITNESS: I said it, your Honor.

I said this would have to be an exclusive deal because while I am expending money on television, if any similar product or the exact same product went out under another label, I would have to get a royal screwing, because they could buy either product while I am spending money on TV time, and it was no problem because Mr. Lennon's attitude was it was never going to come out on Capitol anyway as a regular release, he didn't dig it.

THE COURT: Did he say that?

THE WITNESS: Yes, sir. He said -- he had said earlier, at the beginning of the conversation, I think I testified, that as far as he was concerned it was a dead item, it was --

THE COURT: Did he say that in response to your mentioning of the need for it to be exclusive?

THE WITNESS: Yes.

Q Mr. Levy, you testified to the Court that at one

point you said to Mr. Seider that it was your understanding that Capitol did not have the mail order rights in the United States, that Capitol's consent was not necessary and you then went on to another topic.

Did Mr. Seider or Mr. Lennon respond to what you said, and if so, what did they say?

A Mr. Seider said he believed that was right as far as the United States was concerned, but as far as the rest of the world was concerned he felt permission was needed from EMI.

Q Was anything said on the subject of retail fulfillment centers, whether permission was needed?

A He didn't think it was. He thought it might be, but he didn't think it was needed at all.

Q Is that what he said?

A Yes, sir. He didn't think it was needed.

Q You mentioned that somebody wrote some figures on paper napkins.

Who wrote them down?

A Well, I was writing the costs on a napkin, the costs that I laid out that I would be paying, the royalties, the jackets, the pressings, the 25 percent for estimated for advertising. I was writing that down to show what my costs were.

Q And did anyone else write anything on napkins?

A I think there were some titles written on the napkins by Mr. Cahl, possibly May Pang when we were talking about the titles.

There was little jotting down of titles.

Q Do you know what happened to the napkins?

A No, sir.

Q Do you have them?

A I don't have them, no.

Q Was anything said about how Apple would fit into this picture, if at all?

A The basic remark was that everybody would be happy, Capitol would be getting their recording, Apple would be getting something and it would clean up a mess.

It was the type of a deal that when it was over everybody would be happy.

Q Was anything said by anyone, Mr. Levy, about putting the agreement in writing?

A At that point, no, not that night.

Q When you finished the meeting that evening, was anything done physically or anything said at the conclusion of the meeting?

A We had a deal, we shook hands, we made arrangements to get to work. Everybody was going to do different

things.

THE COURT: Listen, don't give me topics.

If there were things said, if somebody said, "We have a deal," then tell me.

THE WITNESS: John Lennon said, "We have a deal."

THE COURT: I mean, I don't know what was said, but it isn't a matter you thinking there was a deal. I need to know what was said.

If things were said about doing work, tell me.

THE WITNESS: John Lennon said, "We had a deal."

THE COURT: Did he say in those words, "We have a deal"?

THE WITNESS: Yes, sir. And we were going to move as quickly as possible --

THE COURT: Who said that?

THE WITNESS: John Lennon said, "This will be the fastest done package I ever did and we are going to move as quickly as possible to wrap it up and get it done."

Phil Cahl, all the titles that were thrown around, Phil Cahl would get the original old records --

THE COURT: Who was saying all this?

THE WITNESS: I suggested that Mr. Cahl -- he wanted the old records and I told Mr. Cahl, "You get the old records and the old sheet music so we can have

the authentic old version of the song."

Mr. Lennon instructed May Pang to get whatever was needed that she could get.

THE COURT: Like what? Did he specify?

THE WITNESS: Some more titles that he would be giving as he went along and to forward that information to Mr. Cahl.

We made arrangements to go to the recording studio the following day, your Honor, to listen to the sides.

He wanted my opinion on how the Spector tape sounded.

Q Who wanted your opinion?

A Mr. Lennon.

Q When you said, "we made arrangements," who said what to whom?

A Mr. Lennon said, "Why don't we meet at the studio tomorrow. I got the Spector tapes up there. I think we should review what we have in the can so we can go from there to see how many more sides we have to record."

Q During this conversation, were any references made by anyone, Mr. Levy, to Adam VIII, Ltd?

A I don't follow your question, Mr. Schurtman.

Q Did anyone use the words Adam VIII?

A Yes.

Q Who used them and in what context?

A I told John that Adam VIII was our marketing company and he was familiar with it.

He said, "I know. I've seen it on television. It bugs me."

THE COURT: We will recess in just a minute when you reach a stopping point.

MR. SCHURTMAN: Yes. I am about to reach a stopping point.

Q Can you remember anything else that was said by anyone at that meeting on October 8th?

A Off the top of my head, no, Mr. Schurtman.

Q One question.

Did Mr. Bernard Brown -- strike that.

MR. SCHURTMAN: I withdraw the question.

This is a convenient stopping point.

THE COURT: We will recess until 10:15 tomorrow.

I have a sentencing that is supposed to be at 9:30, but they have all this security downstairs and people take a little longer, so I won't get to you until about 10:15.

MR. SCHURTMAN: Your Honor, may I raise one question on the record?

THE COURT: Okay.

MR. SCHURTMAN: At some point we would like to

play to you selections from the various records involved in this litigation, just the two competing albums, and the seven and a half inch master tapes.

THE COURT: Okay.

MR. SCHURTMAN: A question had come up during the trial before Judge MacMahon.

We had set up some sound equipment in the courtroom, we were ready to play these records, the defendants objected on the ground that these records should be played only in a sound studio because you could not get a proper quality of sound in a courtroom.

I took the position that these records would ultimately be listened to by consumers, by teenagers and possibly their parents who don't listen to records in a sound studio.

Judge MacMahon at first said, yes, the records would be listened to by consumers, but then he ruled that we should make arrangements for a sound studio and ordered us to remove the equipment from the courtroom and said the jury should go to a sound studio to listen to the records.

My question is, what would you like to do?

MR. BERGEN: Your Honor, I think I can clear it up a little bit.

The defendants object to the records being played

at all, here or any place, because it doesn't make any difference to this case whether a person, whether you or I or anybody else can tell the difference between these two records, because the important thing in this case is whether the tape that Mr. Lennon gave to Mr. Levy was the final version of the album as far as Mr. Lennon is concerned.

THE COURT: As far as who is concerned?

MR. BERGEN: Mr. Lennon is concerned, because it is our position that the copy of the tape, the seven and a half IPS rough mix, was just that, a rough mix. It was not the final version of the album. He had no idea that Mr. Levy was going to use it for a record.

He didn't give it to him with that intent so it does not make any difference.

THE COURT: The plaintiff feels there is something in the playing of those records and tapes that bears on the plaintiffs' case.

I don't know at this point, you know, whether it does or it does not, but the plaintiffs are saying this is something they want to bring out.

Maybe the defendant's don't want to bring it out, but I take it from what you gave me in your opening statement you feel that this bears in some way upon the credibility of the position of the defense and maybe their

witnesses as to whether this was or was not the final work and so forth.

MR. SCHURTMAN: Yes.

THE COURT: I would hate to preclude it without playing. I would also hate very much to have to spend a half a day going uptown and --

MR. SCHURTMAN: May I suggest this --

THE COURT: I don't see why we can't do what we need to do here in the courtroom and if there is a matter which requires something in a sound studio maybe we can do it. But I would certainly hope not.

MR. SCHURTMAN: I would suggest, your Honor --

MR. BERGEN: Would it be possible to use head-phones?

THE COURT: Use anything that helps. Head phones is a pretty good way to do it, I imagine.

MR. SCHURTMAN: We will play it both ways. We will bring the equipment in. You can listen to it the way the average consumer would listen.

THE COURT: The playing of the records may not have any particular value, they may. I just don't know. But at least let's not make arrangements to go uptown and spend all that time.

MR. SCHURTMAN: May I suggest that we bring the

equipment in and you listen to it for what it is worth.

THE COURT: Certainly.

MR. PRETTYMAN: Your Honor, for the record, may I just make absolutely clear so we are protected, we think actually the playing of the records is going to help our case. We just want to make sure for the record we are objecting to the playing because of the reasons stated by Mr. Bergen, namely, it is the wrong issue.

You implied that there might be something there which we didn't want you to hear. Quite to the contrary, I think it is actually beneficial to our case. But we do object on the playing on the theory that they want it played for the wrong reason, namely, that the average listener would get something from it.

THE COURT: Why do I care what theory it is played on. If it is evidence, then anything can use it in any valid manner.

I just want to find out.

Let us forget the theory on which it is played because I am not worried about that now.

What do you want? You want the two records played and then you want this seven and a half tape?

MR. SCHURTMAN: Yes. And we don't have to play the whole thing, we will play as much of it --

THE COURT: Yes, I'm sure you don't need to play the whole thing.

MR. SCHURTMAN: -- of it as you want to listen to and then we will stop.

THE COURT: Mr. Prettyman, let me start with you.

Do you object to this playing? Let us forget what theory it applies to.

Do you object to the playing?

MR. PRETTYMAN: We object to the playing, but if it is going to be played we would request, your Honor, to listen to both records entirely, and that would also prevent us from bringing all the equipment back into the courtroom again when it became our case.

THE COURT: Would you be introducing these records in as part of your case and having them played?

MR. PRETTYMAN: It is hard for me to answer that now, your Honor, but I will put it to you this way:

If you were going to listen to any part of it, we would definitely come in and make sure that you heard all of both of the albums.

If you were not going to listen to any part of it at all, and we have objected to the playing of it, then I think we probably would not.

THE COURT: Do you have any feeling about whether this can be done in the courtroom or a sound studio?

MR. PRETTYMAN: It was our position that in view of the fact that it is the total quality of the sound as Mr. Lennon hears it and understands it and appreciates it, that only by listening to it in a studio with all the effects, we are still not sure that someone untutored, with great honor, would really appreciate the difference, but if we are going to do it we thought it would be better in a sound studio.

But we recognize the practical problems there, so, therefore, if you are going to do it we prefer that you do it at least with a headset, which I think it does help you in terms of distinguishing quality.

COURT: Why don't you get your equipment down. It really may not advance the case much.

Basically, what I will have to do is to listen to testimony.

Believe me, I never listen to this music. It is not my music so, you know, I don't know how much I would judge, but I will do my best. If you want to play it, we will try it out a little bit, but certainly let's hope we don't have to get to the sound studio and let's hope we don't have to play two and a half hours or three hours of records,

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because I really hope --

MR. PRETTYMAN: It is two hours.

But can we have it understood that if they are going to play a couple of songs of theirs that you will listen to a couple of hours while it is here so we don't have to bring all the equipment back?

THE COURT: Oh, sure.

See you at 10:15 tomorrow.

(Adjourned to January 15, 1976, at 10:15 a.m.)

BIG SEVEN MUSIC CORPORATION
et al.,

vs. 75 Civ. 1116

JOHN LENNON, et al.,

January 15, 1976
11:00 a.m.

(Trial continued.)

xx MORRIS LEVY, resumed.

THE COURT: Let me ask you this:

One reason that we decided to have the non-jury trial was so thatwe could make sure that any witnesses who had come from thousands of miles or whatever it was, the people we are talking about, could get on the stand, hopefully, promptly and all.

This is Thursday and we are certainly starting late and I apologize, but you might get your thoughts together before the weekend, and if there is anybody that would be greatly helped by getting on the stand before the end of the day Friday, I think we should try to do that.

The way it looks right now is that I will have my motion day on Monday, but I think the criminal case that was scheduled to start Tuesday is off at least for a week, so I can continue Tuesday.

But, again, I am perfectly willing to accommo-

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date the witnesses and the lawyers as far as the order of proof if there is something that would help.

So you think about that.

In view of the fact that next week is available, I would not expect to sit Saturday. That is a little hard on everybody.

MR. PRETTYMAN: May I make one statement, your Honor?

THE COURT: Okay.

MR. PRETTYMAN: All of my witnesses who are here from Los Angeles went back. I have no problem with them. I can bring them in again.

Two of my witnesses are from London. I stopped them just before they got on the plane.

I have, however, one serious problem, and that is with Mr. Bernard Brown, who had gotten on the plane before I could reach him, who is here, who, unfortunately, has to go back over the weekend.

He is not employed by us, he is employed by other people.

He has been over twice now and his employer will not let him come again.

I think in view of the importance of his testimony, as you can tell by what has happened so far, even

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though we have him by deposition, I think it really would be extremely well if your Honor could look him in the face and listen to his story.

THE COURT: I have no problem with that. I would appreciate you -- in other words, we have basically, a day and a half, a little more, between now and tomorrow night.

You work it out among yourselves and if you have any problems come to me, but I am perfectly happy to have Mr. Grown get on and off at any time.

MR. PRETTYMAN: The only problem would be it would be before the end or it might well be before the end of the plaintiff's case. He would be the first witness for the defense.

THE COURT: I have no objection to that. That was the whole point I am trying to make.

MR. SCHURTMAN: Mr. Prettyman, would you like to put Mr. Brown on right now?

MR. PRETTYMAN: No.

I do see he is down here --

THE COURT: You work together.

MR. PRETTYMAN: Perhaps tomorrow afternoon would be fine.

THE COURT: But what I really meant, and I

guess I wasn't explicit, was that for my purposes it is immaterial whether you put on a defense witness before the plaintiff rests, if the lawyers can agree to that, I have no problem at all.

MR. PRETTYMAN: Fine.

MR. SCHURTMAN: Mr. Prettyman, let me just point out, I do have one witness who has to leave the country over the weekend. I definitely intend to put him on on Friday. So if you want to get Mr. Brown on before the weekend, I suggest you think about putting him on today.

MR. PRETTYMAN: We will work it out between us. Between us we will put our two witnesses on tomorrow, that's all.

THE COURT: This is what I am talking about.

MR. BERGEN: Your Honor, I may have two short witnesses, also, but we will work that out.

THE COURT: I think what you better do this noon is to work out a schedule, because we won't be sitting Saturday. Get your heads together as to who these witnesses are that should be finished before the end of the day Friday and whatever you work out is perfectly okay with me.

MR. BERGEN: Thank you, your Honor.

CONTINUED DIRECT EXAMINATION

BY MR. SCHURTMAN:

Q Mr. Levy, when we finished up yesterday, I asked you if anything was said at the October 8th meeting about putting the agreement in writing, and I believe your answer was not at that time.

Why didn't you request at the October 8th meeting that the agreement be reduced to written form and signed by the parties?

A I really don't know on the October 8th.

We did discuss a written agreement at subsequent meetings, there it would probably be reduced to writing later on.

But October 8th, I didn't think of reducing it to writing, Mr. Schurtman.

Q Has it been your practice in the past to make oral agreements of this type?

A I have made many oral --

MR. PRETTYMAN: I object, your Honor. There is no showing that he ever made any agreements of this type before.

THE COURT: Overruled.

Q Have you ever made any oral agreements?

A Yes, sir.

Q Can you describe the nature of these oral agreements to the Court?

THE COURT: Let me just explain.

The reason that I am receiving this, obviously these other agreements are not related as such to the case, but it may bear on credibility, so I will receive this testimony, very briefly, however, not in detail.

A I had an agreement with St. Patrick's Cathedral Choir that was oral to record the St. Patrick's Cathedral Choir with two albums. It was an oral agreement made with Cardinal Spellman. We recorded the two albums with St. Patricks.

With CBS, I have made many agreements that were oral and they paid me large advances while it was oral, but after the package was put together it was put in writing. They paid me as much as a thousand dollars at a time on a handshake.

I proceeded to make the package. After I completed the package it was put into written form with the titles and the lists and everything else of what the package contained.

I made an oral agreement with --

THE COURT: May I interrupt you.

I would like the answer read just this far by the

reporter.

Would you read it again.

(Record read.)

THE COURT: All right, you go ahead and finish your answer.

A I've made some oral agreements with K-Tel.

THE COURT: Who is that?

THE WITNESS: That is actually a competitor. That is a large company that does the biggest in this field. I used to make their package.

THE COURT: Remember what I told you yesterday.

Although you are speaking to me, everybody has to hear you, so speak slowly, speak as loudly as you can.

You made oral agreements with K-Tel?

THE WITNESS: Yes.

THE COURT: Go on and describe that.

A They would pay me in advance as high as a hundred or $200,000. I would agree to make a package for them.

After the package was put together and the various titles were assembled, then we would put it down in writing with schedules of what the package contained.

Q Is it your testimony that in the oral arrangements that you just described that money passed hands and performances were made before the agreements were put in writing?

A I am sorry. I didn't understand that.

THE COURT: You don't need to summarize. What do you mean by a package?

THE WITNESS: With all these things, these record packages that are sold on television, a package is when we compile various masters from various companies to create the package.

In other words, there might be 10, 20, 30, 40 songs. They may come from as many as 15 different companies I might negotiate with, but I might be making the package for one individual who will sell it.

THE COURT: I don't understand CBS. What would be the relationship between you and CBS? Is CBS selling you something or buying something or what?

THE WITNESS: It would be buying in this case, your Honor.

Columbia Special Products is the actual division.

THE COURT: What would they be buying?

THE WITNESS: They would come and say,

"We want a concept package on Rock and Roll. For seven, eight years before I actually sold the packages myself, my basic living. An important part of it was making packages, the ones that I sell now, similar, for other people in the business, as far back as nine, ten years ago.

THE COURT: And then CBS would sell them?

THE WITNESS: What would happen if Mr. Shuman at CBS will come to me, "I got an idea for a package. I want 20 Rock and Roll songs. If you put it together we will pay you a $100,000 advance against a royalty."

THE COURT: You would ultimately get a royalty?

THE WITNESS: Yes, sir, my company would.

THE COURT: And CBS would market the records?

THE WITNESS: No, they may turn around and either market under their banner of Columbia House or they might sell it to another house to market it on television.

THE COURT: The idea was you would produce it?

THE WITNESS: Yes, sir.

THE COURT: And CBS or somebody else at CBS whom you were dealing with would mark it?

THE WITNESS: That is correct, sir.

THE COURT: Is that the same thing that was involved with these agreements with K-Tel?

THE WITNESS: K-Tel, I would make the package, they would market it. They are the biggest in the industry.

THE COURT: On TV marketing?

THE WITNESS: Yes, sir.

THE COURT: You would produce and K-Tel would market? Is that the idea?

THE WITNESS: Yes, I would create for them the concept, get the licenses and make the deals with the various record companies that own the masters and create a furnished package for K-Tel to market.

THE COURT: Go ahead.

Q When you say you make deals for masters, are these deals oral in writing or both?

A I have had oral and in writing in making deals for masters.

Q And the deal for masters is a license?

A An example is, say, K-Tel would like to have Groove-in by the Rascals. I would call up Atlantic and say, "I got a package. I would like to have Groove-in by the Rascals. It has been a hit some years ago." Atlantic would say, "Go ahead. What are you going

to give us?"

And we make a deal. And some of those deals were never reduced to writing.

MR. SCHURTMAN: Does your Honor wish me to pursue the identity of those deals?

Q Did anyone say at the October 8th meeting that the deal that you say was made was subject to a written contract being executed? Were those words said by anyone?

A No, sir.

Q Or the substance of those words?

A No, sir.

Q Was anything said by anyone at the October 8th meeting about this deal being subject to a specific length of time?

A No, nobody said anything about it being subject to any length of time.

Q Were you in court yesterday when Mr. Bergen gave his opening statement for the defendants?

A Yes, sir.

Q Do you recall Mr. Bergen reading to the Court certain testimony --

MR. BERGEN: Your Honor, I didn't read that testimony.

MR. SCHURTMAN: Somebody read it. Perhaps

it was Mr. Prettyman.

MR. GRUMBACH: It was I.

THE COURT: You must give credit where credit is due.

MR. SCHURTMAN: I attribute the reading of the testimony to Mr. Grumbach.

Q Did you hear one of the defense lawyers read certain testimony that you had given in your pretrail deposition?

A Yes, sir.

Q They read from page 128, and I would like to read that testimony to you again, Mr. Levy. Listen to it. You were being examined by one of the defendants' lawyers.

THE COURT: This is a deposition? When was it given?

MR. SCHURTMAN: On June 2, 1975.

THE COURT: Who was questioning in this instance?

MR. BERGEN: Mr. Prettyman, your Honor.

Q Page 128, questions being put by Mr. Prettyman:

"Q Was there any termination date agreed to that evening in regard to the Roots album? That is, was there a specific period outlined during which it would be sold and

an agreement reached that it would not be sold after a particular date?

"A We had some discussion as to how long these campaigns run and I said that the usual licenses are for two to three years.

"Q And it was contemplated, therefore, that the Roots album would be selling during perhaps a two or three-year period?

"A Right, depending upon --

"Q And as to that was there any agreement that it would actually terminate at any particular point in time as opposed to what would normally be expected?

"A Two or three years.

"Q You actually agreed that evening that --

"A We actually discussed --"

MR. SCHURTMAN: And at that point, your Honor, I objected.

THE COURT: Does anybody have a copy of this that I can look at?

MR. BERGEN: Right, here, your Honor.

THE COURT: You started where?

MR. BERGEN: Line 13.

THE COURT: How far did you read?

MR. SCHURTMAN: To line 7 on page 129.

THE COURT: I will read it again.

MR. SCHURTMAN: I would like to continue to read at line 8. There was an objection by myself, "Wait a minute. I am going to object. You keep asking for legal conclusions. Whether there was an agreement is a legal conclusion. If you want to ask him what was discussed and then draw your own inferences, that is fine."

Q Now, Mr. Levy, what was discussed at the meeting? Who said what to whom with respect to whether this agreement was to be for a specific member of years or for any specific period of time?

A I context, Mr. Schurtman, it was not discussed, the length of the agreement in that thing. Actually, even the discussion about the length of time of sales was really based more on operation procedures than it was to do with the length of time. It was explaining how we operate.

MR. PRETTYMAN: I object, your Honor.

THE COURT: No, let him finish. Don't interrupt.

A (Continuing) It was explaing how we operate and how we sell and how the campaigns run. It was not discussed it will be a one, two or three-year agreement at all.

THE COURT: I want the question and answer read, please.

(Question and answer read.)

Q Mr. Levy, so we are clear on this --

THE COURT: Are you finished with this deposition now, so I can give it back to Mr. Bergen?

MR.SCHURTMAN: I am for the time being.

MR. BERGEN: I am sharing this with Mr. Grumbach.

THE COURT: I better give it back to you.

Q Mr. Levy, what was said to whom by whom about this package you were talking about and that was to be produced?

A Mr. Lennon wanted to do it as quickly as possible, to get it finished and get it ready. I, naturally, wanted to get it done as quick as possible, and we proceeded to work on it immediately.

Q Did you tell Mr. Lennon in words or substance that you wanted to get it done as quickly as possible?

A Yes. So did he.

Q Mr. Levy, at the time of the October 8th meeting did you know Mr. Lennon's position, if any, with Apple Records?

A Yes.

Q What was his position?

A President of Apple Records.

Q How do you know that?

A I knew it as knowledge; I alao believe it came up during the first case with Apple a few years prior. I knew it. It was even possible, I said, Mr. Schurtman, in the discussions.

Q Now, after you left the club on October 8th what happened next in connection with this particular case?

A The next day I was in my office.

Mr. Garlick came by

Q Who is Mr. Garlick?

A He is the president of Ivy Hill.

THE COURT: How do you spell his name?

MR. SCHURTMAN: G-a-r-l-i-c-k.

THE COURT: Who is he?

THE WITNESS: He is the president of Ivy Hill Lithographers.

THE COURT: Who are they?

THE WITNESS: They are the printers in a good deal of the industry making jackets.

THE COURT: He came by and what was said?

THE WITNESS: I told him about what took place the night before and it would probably be the biggest album we were associated with, and I told him that I was going to listen to the tapes that afternoon.

He said, "Could I come along, too?"

I said, "I see no objection."

And Mr. Garlick accompanied me to the studio to hear the tapes that afternoon.

Q What was the name of the studio that you went to?

A Record Plant.

Q Do you know where it is located?

A It is on the right side, I believe, in the 40s between 8th and 9th or 9th and 10th.

THE COURT: It is called what?

THE WITNESS: The Record Plant.

THE COURT: On the west side in the 40s?

THE WITNESS: Yes, sir.

Q Did you meet anyone else at the Record Plant?

A At the Record Plant was May Pang, John Lennon, their engineers; there were somepromotion people from Capitol; later on Mr. Kahl came in, Mr. Brown came in; what actually happened, there were more people than usually at a recording studio because it was John Lennon's birthday and some people came by to bring him a cake and popped some champagne, and it was an impromptu birthday party for Mr. Lennon.

THE COURT: Will you read the names again?

(Testimony read.)

Q Now, tell us what happened at the Record Plant.

A Mr. Lennon took myself, Mr. Garlick, and Mr. Kahl, I think May Pang came in for a while, and we listened to the Spector tapes.

THE COURT: I am sorry.

THE WITNESS: Took us into a studio.

THE COURT: Took who?

THE WITNESS: Myself, Mr. Garlick, Mr. Kahl, I believe May Pang was in there part of the time. I couldn't be sure.

MR. GRUMBACH: May we have the time of the day that this took place?

THE COURT: What time of day?

THE WITNESS: Approximately between 3 and 4 o'clock, in that area. It was in the afternoon. I don't believe it was in the morning. It was in the afternoon.

THE COURT: He took you into where?

THE WITNESS: The studio.

THE COURT: And then what happened?

THE WITNESS: They played the Spector tapes.

Q Did they play all of the Spector tapes?

A I could not say. They must have played about

six or seven.

Q Did they limit the Spector tapes to the songs that were owned by the Big Seven?

A No, sir.

Q Which of the Spector tapes had songs owned by the Big Seven on them?

A I believe they had, two songs recorded by the Big Seven were on the Spector tapes.

Q What were these songs?

A Angel Baby. I'm not sure of the other one, Mr. Schurtman. I am not sure it was You Can't Catch Me. It might have been.

Q Speak up.

A It might have been You Can't Catch Me.

Q Now did they play any other Spector tape songs as well?

A Yes.

Q Do you remember how many others?

A Three, four, five more.

Q How many times were these tapes played?

A Just onece.

Q Did anyone say anything to anybody while the tapes were being played or afterwards?

A I did afterwards.

Q Will you tell the Court who said what to whom?

A I said that they were unbelievable and I told Mr. Lennon which was my favorite, even though it was not my song, even though it was not a Big Seven song.

Q Could you name your favorite?

A Yes.

Q Which one was it?

A "Be My Baby."

THE COURT: When you said unbelievable, you mean unbelievably good or bad?

THE WITNESS: Good, sir.

Q Did anyone else say anything?

A Phil made some complimentary remarks; Mr. Kahl made some complimentary remarks. I don't think I could be specific what they were. Mr. Garlick said to me, "It will probably be a great package."

Q Did you then leave the studio?

A We had a drink of champagne.

Q At the studio?

A Yes, outside the studio, and the big birthday cake, and at that time I knew that John was going through the dinner that night, a dinner for the president of Atlantic Records. I said, "It is your birthday and if you are going out tonight we can have a

little party when this thing is over, about 10:30, 11 o'clock in the evening. If you want to bring some people, be my guest at the club."

Q Which club?

A The Club Cavallero. And he said that was a wonderful thing.

He said, "We will probably come with about 20, 30 people."

I said, "Great, let's have a nice birthday party."

Q Did that party, in fact, take place that night?

A Yes, sir.

Q How many people were there at the party?

A I would say about 20, 25, 30.

Some came and left, and then some more joined. I could not be specific exactly how many there were.

Q Who paid for the expenses of the party?

A Adam VIII.

Q Was any business discussed at that birthday party?

A No, sir.

Q During the next few days did anyone in your company or you yourself do anything in connection with the production of the proposed album?

MR.BERGEN: Can we have what Mr. Schurtman means by production of the album?

THE COURT: Let me have the last question and answer.

(Record read.)

THE COURT: I don't think there is any problem.

A I know Mr. Kahl was working with May Pang about digging up the old records and getting some sheet music together, discussing songs. I personally did nothing on Thursday. I left Thursday night forthe farm and I didn't do anything on Thursday. I left for my farm.

Q What do you mean by digging up the old records?

A Well, I think I testified earlier what Mr. Lennon wanted, like if we discussed an old Chuck Berry song that was a hit in the '50s, he wanted the original old record so that he could refresh his memory about what the song was really like and have a feeling of what was a hit in the '50s, and some of these records were 20 years old or 18 years old, some of these old records that had to be dug up.

THE COURT: Who was to do the digging up?

THE WITNESS: Mr. Kahl.

Q When was the next time you saw Mr. Lennon?

Monday night of the following week.

THE COURT: Let me get this: Would you remember what day of the week October 8th was?

THE WITNESS: I think that was a Tuesday. I think the party was on a Wednesday.

THE COURT: You say you leave for your farm Thursday?

THE WITNESS: Afternoons.

THE COURT: You leave Thursday afternoons?

THE WITNESS: Yes, sir.

THE COURT: Go ahead, Mr. Schurtman.

Q If I can interject one thing, Mr. Levy, is it a working farm?

A Yes, sir.

Q What kind of farm is it?

A It is one of the largest dairy farms in New York State.

Q Are you actually engaged in the operation of the farm?

A Yes, sir, absolutely.

Q Is it your practice to divide up your time then?

Q It has been my practice for the last six years, except on very rare occasions, to leave Thursday

afternoon or Thursday early evening.

THE COURT: What town is that in?

A Ghent.

THE COURT:How far is it from New York?

THE WITNESS: About 120 miles.

THE COURT: What do you do? You go up Thursday afternoon and when do you come back?

THE WITNESS: Sunday evening or Monday morning. That depends on my schedule. Or if I have to bring my son to school Monday.

THE COURT: In this instance when did you come back?

THE WITNESS: I could not be specific.

THE COURT: It would be --

THE WITNESS: Either Sunday night or first thing Monday morning.

Q Mr. Levy, October 8th was a Tuesday, and I believe the following Monday would have been the 14th, October 14th?

A Yes, sir.

Q The calendar shows Monday was October 14th. Where did you see Mr. Lennon and when?

A Club Cavallero early evening.

Q Was anyone else present?

A May Pang, Phil Kahl.

Q Were you sitting at a table?

A We had a table.

Q Can you tell the Court who said what to whom?

THE COURT: How did that meeting come about?

THE WITNESS: By arrangement. We said we would meet again to discuss about the material and getting it squared away.

THE COURT: When was that said and who said that?

THE WITNESS: That was on Wednesday. John told me he was going away for the weekend to be with Mick Jagger.

Q Who is Mick Jagger?

A He is the lead in the Rolling Stones.

THE COURT: What did he say? What was said about the meeting again?

THE WITNESS: That we were going to have a meeting about going over the songs that Phil was digging up and we would meet Monday evening to get into that and he would be away for the weekend. I probably suggested that maybe he wanted to come --

MR. BERGEN: Instead of probably, can we have what happened?

THE WITNESS: I suggested he come up.

THE COURT: There is no occasion for tnat remark. He is giving his best memory, and I expect to have his best memory, and if his best memory is probably, he can say probably.

Now, let's go back. I want to know what was said. Just start again? Was this occasion at the studio or was it at the late evening party or when was it?

THE WITNESS: It probably was at the studio, your Honor, because I know I avoided talking any business at the party.

THE COURT: What was said that led up to this weekend and the future meeting? That whole subject? Let us have it again, please.

THE WITNESS: I told him that we would have to have another meeting to finalize all these tunes that were bouncing around from the Monday meeting, from the October 8th meeting, which was Tuesday, and we said we would get together on Monday. I believe I suggested if he wanted to work over the weekend --

THE COURT: To the extent you possibly can, don't use "we." It may make a difference whether you suggest something or Mr. Lennon suggests it.

THE WITNESS: I suggested it; it was at my suggestion.

THE COURT: You suggested another meeting?

THE WITNESS: Right.

THE COURT: Did you suggest it for what time?

THE WITNESS: I said if he wanted to have it in the afternoon it would be fine, I would be available. He preferred not coming to an office and having the informality of a place where he could sit more relaxed.

THE COURT: I am sorry. I am just not quite with you. You said there was another meeting needed to finalize the titles?

THE WITNESS: Yes, sir.

THE COURT: You suggested a meeting the following Monday? Is that correct?

THE WITNESS: Yes, sir.

THE COURT: At that point what else was said? Did you suggest a place?

THE WITNESS: I did.

THE COURT: Did Mr. Lennon suggest a place?

THE WITNESS: I suggested it be in my office. Mr. Lennon said he never goes to any office as a rule, and we said we would meet at the club. I suggested then the club. Mr. Lennon said, fine, he would like the club. As a matter of fact, we got him a membership

because he wanted to come in on his own.

THE COURT: What was said about the time, whether it was morning, afternoon or evening?

THE WITNESS: Early evening.

THE COURT: Now we are at that meeting.

Go ahead, Mr. Schurtman.

BY MR. SCHURTMAN:

Q Who said what to whom at that meeting?

A Mr. Lennon when he came in was very excited and probably the first thing that was said was, "I got a title for the album." And he went on to tell me Mick Jagger, he told Mick Jagger about the album over the weekend. He had suggested the title "Old Hat". He knew a German photographer who had an old picture of him as a kid and he could almost see a cover with a bunch of old hats, theatrical type hats, and it would make a great cover for the album.

I said to him, "That is a great title, but there are a number of others. Naturally, if you want that, that is what we will do. I suggest "Roots," saying, "John, a lot of the material we are picking here is basically the roots of what happened, like a big tree. What is happening today in music stems from what the kids were doing in the '50s. It is a natural evolution of the

music."

He says, "Well, we have got time for that. I am going to try and dig up this picture from this German photographer."

THE COURT: Was this a picture of Mr. Lennon?

THE WITNESS: Yes, sir.

THE COURT: Go ahead.

THE WITNESS: He then described some of the things that happened, that this picture was taken in a club. The Beatles were working in a club in Germany, and some of the conversation at that point was how little they got paid.

THE COURT: You mean some of the conversation at your meeting?

THE WITNESS: Yes. It developed into some background -- not background, but sort of the detail about how hard it was when they were kids and worked so cheap in this club in Germany.

THE COURT: All right. Go ahead.

A We started talking about additional titles.

I believe at that point --

THE COURT: You are talking about titles for songs?

THE WITNESS: For songs, yes, still trying to finalize titles.

At that point there I think May Pang had a list of songs that was given to Mr. Cahl.

We also discussed, John, "I'm so enthusiastic. I'll probably start to rehearse this week, toward the end of this week. I'm flying musicians in. This is going to be a quick proposition. We are really going to get this done quickly and right."

Then he told me, he said, "One dam trouble with rehearsing in New York, you'll call a rehearsal and guys will get hung up or if you take a break and a guy goes out for a couple of drinks he might not come back for two hours.

It is a drag rehearsing in New York, especially with guys coming in from out of town."

I says, "John, if you like, I have a large home in the country. We can make everybody very comfortable. You'll sort of have a locked-in audience, because they can't go anyplace. All they can do up there is talk to a cow. And if you like, we can make all the arrangements and take all the musicians up to the farm."

He says, "Well, how can you do it in a small --"

I says, "It's large enough to accommodate, make everybody comfortable. There is a very large second living room in the back of the house. We have piano and everything can be done, and I think in a couple of days you would accomplish more than you would do eight days in New York rehearsing."

John liked the idea. He told May Pang to start working with Phil.

I instructed Phil. I says, "Phil, get limosines to get everybody up there. Make sure everybody is comfortable."

Mr. Lennon started telling May Pang, telling what instruments were going to be needed.

Mr. Cahl was instructed by John to make sure -- in conversation and instructed him, he says, "Hey, make

sure the piano is tuned, you know."

This list that was furnished to Mr. Cahl, Mr. Lennon says, "Make sure we get five copies of each set of sheet music, each sheet of the lyrics and the music, the old record."

And from there we started -- Mr. Cahl followed through, got the limosines and everything. He was in constant touch with May Pang the rest of the week. And Thursday night, May Pang, John Lennon and myself drove up to the country in my car.

Q Would that be the night of October the 17th?

A Yes. Monday was the 14th. Yes, the 17th.

THE COURT: Who drove up in your car?

THE WITNESS: May Pang and John Lennon.

THE COURT: And yourself?

THE WITNESS: That's correct.

THE COURT: What about Mr. Cahl?

THE WITNESS: No. He came up on Friday and stayed to make sure of last minute arrangements with limosines, equipment that had to be brought up.

He came up on -- sometime Friday. I couldn't be specific, your Honor. Sometime, I believe, on Friday.

Q Did you and Mr. Lennon discuss any business in the car?

A Mr. Lennon told me how excited he still was, that this was going to be a great thing and how excited he was about it, he hadn't felt like this, about completing a package, since he was a kid and that this was really fun, it's the music that he loved as a kid and it was a fun, fun project.

Q Do you remember anything else being said?

A There was a lot of conversation in the car. We had two hours and 20 minutes, Mr. Schurtman, of more or less talking, listening to music, talking about -- we had a discussion about the automatic drive.

At one point Mr. Lennon says, "What the heck are you doing with your foot off the gas pedal," because I had it in cruise control and he had never seen that before. We discussed that ten minutes, how it works.

It was just driving conversation.

Q During that weekend, did Mr. Lennon, in fact, hold rehearsals?

A Oh, excuse me.

I forgot one other thing that happened on the Monday night.

Q Go ahead.

A On Monday night, when the list was supplied to Cahl, I suggested to Mr. Lennon that I get a copy of the

Spector tapes, that I would like to hear them over the weekend and be able to really know what was recorded.

John told May Pang to get me a cassette so that I could listen to the Spector tapes over the weekend and subsequently before we decided on all the songs.

I couldn't be specific whether I got them Tuesday or Wednesday or Thursday of that week, but they were, like, dropped off at my office while I was not there and they were sitting on my desk and they were delivered by -- May Pang told me they were there.

They were brought to me.

THE COURT: That was before the weekend trip?

THE WITNESS: Yes, sir. And these were for reference for me all the songs that were recorded with Mr. Lennon and Mr. spector.

Q I show you Plaintiffs' Exhibit 25A for identification (handing).

Can you identify this exhibit?

A May I take this off, because the identification-- this is the John Lennon tape of all the songs that Phil Spector and John Lennon recorded and it is in reference form.

This is the type of thing that is sent to you to listen for reference when you are listening to stuff --

THE COURT: Was that what was delivered to you?

THE WITNESS: This was, yes, sir.

THE COURT: That is what number?

MR. SCHURTMAN: 25A.

MR. PRETTYMAN: We don't have that on our list. Is that a new exhibit?

MR. SCHURTMAN: It is an additional exhibit. We did not include it in the list.

I offer it in evidence.

THE COURT: Any objection?

MR. BERGEN: Your Honor, may I ask Mr. Levy a couple of questions about the tape?

THE COURT: Sure.

xx VOIR DIRE EXAMINATION

BY MR. BERGEN:

Q Mr. Levy, when did you receive this tape?

A I'm not sure of the exact date, Mr. Bergen. I'm not sure of the exact date.

My request for it was that Monday night.

Q The Monday night, the 14th?

A That's correct.

Q You didn't ask for a tape or Mr. Lennon didn't offer you a tape on October 9th, did he?

A I don't believe so, Mr. Bergen, but it could be

possible that there may have been some discussion about hearing the tape some more on the 9th, too.

Q And do you recall how long after the night of the 14th you received it?

A Within a short period.

Q How did you receive it?

A It was delivered to my office when I was not in my office and my secretary told me that this was delivered for me.

Q Was it in an envelope or a box?

A I believe it was in an envelope.

Q Do you still have the envelope?

A I'm not sure.

MR. BERGEN: I have no objection, your Honor.

THE COURT: All right.

Oh, one more question.

Q Do you know whose writing this is on the front where it says, "John Lennon, 1-17" in green ink?

A No, I don't.

Q That isn't your writing?

A No, that's not my writing.

Q Is it your secretary's?

A No.

THE COURT: All right. 25A is received.

(Plaintiffs' Exhibit number 25A was received in evidence.)

VOIR DIRE EXAMINATION

BY MR. BERGEN:

Q Can I just be clear that, Mr. Levy, your testimony is that there are seven songs on that track?

A Seven or eight. All the Spector tape is what I believe is on that track, Mr. Bergen.

Q Have you ever listened to the track?

A Yes, sir.

Q Do you know what the titles are that are on it?

A Approximately.

I know "Be My Baby," Boney Marronie," the things that were recorded with Spector.

BY MR. SCHURTMAN:

Q Do you remember anything else about this cassette?

A That, basically, was, I believe all the Spector tapes that were recorded for me to evaluate when we discussed other songs that were going to go into the Album.

That's a reference. That's how you would get something to listen to just for --

Q Let us move on, again, to the weekend at the farm.

Did rehearsals actually take place?

A Yes, sir.

Q Did Mr. Lennon's musicians come up to the farm?

A Yes, sir.

Q How many?

A I believe about five in total.

Q Do you know their names?

A There was one fellow was a German. There was a fellow Jesse, who come from Vermont.

I think he was the first one to arrive.

There was a Claus Voorman. There was, I believe, three other musicians. One came up quite late. I think Saturday. One had missed coming up on Friday.

But in total, the musicians came.

Q Did you put up Mr. Lennon and the musicians in guest rooms?

A Yes, sir.

Q Where did the rehearsals take place?

A In the large living room in the back of the house.

The house has a whole guest wing with an additional living room in that guest wing.

It is a very -- it is a large room. And wet set up all the drums there, the amplifiers, the guitars and the

piano was moved to that room and that's the room where all the rehearsals were held.

Q And how long did these rehearsals last?

A Hours and hours. Friday, Saturday and part of Sunday.

Q Can you give the Court any estimate of how many hours?

A In total?

Q Yes.

A I'd say about 30 hours. They worked very hard.

Q What did they rehearse?

A They rehearsed all the new material that had been compiled that either Mr. Lennon suggested or May Pang suggested or I suggested or Mr. Cahl suggested.

Basically, most of the things that Mr. Cahl got five lead sheets and the list supplied by Mr. Lennon to Mr. Cahl, five lead sheets and the old records.

Q What is a lead sheet?

A That is the printed music with lyrics attached.

We also had a problem with the lyrics, Mr. Schurtman.

We had to send out -- this is a farm community-- to get a typewriter, because Mr. Lennon wanted all the lyrics on a separate sheet of paper in all capitals.

In order -- so we had to send out to get a typewriter and bring in somebody in to do the typing.

I'm not sure if May Pang or somebody else did it, but somebody had to type up all the lyrics in capital letter form with double spaces.

Q Did you personall participate in the rehearsals in any way?

A No, not -- I played no instrument or anything to participate.

Q Did you listen to the rehearsals?

A I went in a few times, but not very much, because I believe there is nothing I can offer musically as far as what they were doing.

There was a couple of riffs.

There were a couple of riffs. That is an expression.

Q What is a riff?

A It's like a little melodic treatment that possibly the piano, the guitar, to get a feeling for a song. It's like humming, I guess.

Q Were any recordings made of these rehearsals?

A Just a -- John made a cassette-type recording just so that there -- there was nobody writing the music.

You see, there are two ways to prepare for a

recording session, Mr. Schurtman. One is to have an arranger come in and write everything out and the other is to do head arrangements, especially with the rhythm sections where you rehearse and get feelings that you want, put it on a cassette so you will remember it two or three days later and then lay your rhythm tracks with that basic rhythm, because that's how they record today.

Q Do I understand you to say the cassette is used in lieu of writing the music down?

A A lot of the people today do that there to get just the feeling of the arrangement without writing the arrangement, to get the feeling of what the rhythm section is doing, the guitars and the bass and the drums.

Q Mr. Levy, you have testified that the people who were up at the farm for these rehearsals were yourself, Mr. Lennon, Miss May Pang, Mr. Philip Cahl and the five musicians.

A No, there were a few more people.

Q That is my next question.

Was there anyone else there?

A Mr. Cahl's wife was there. I think one of his musicians had his wife there. I think one had his girlfriend, but I couldn't be sure.

Mr. Masucci stopped by.

Q Who is Mr. Masucci?

A He is the president of Fania Records.

Q What is his first name?

A Jerry.

Q Is Fania Records a company?

A Yes. It's the largest Latin company in the States.

Q Is it connected with your companies?

A No.

Q What was Mr. Masucci doing up there?

A He visits me on occasions. We are friends. We are friends.

Q Had you invited him to come up?

A Yes.

Q Was anyone else up there?

A Bill Chapman and his son, on their way to Boston and stayed over one night.

Q Who is Mr. Chapman?

A He is an old neighbor of mine when I lived in Jersey, in Engelwood, and he lives in Florida now, and his son is -- one of his children, I'm not sure if it is his son or daughter, is attending school in the Boston area and on his way up he stopped over night and left for Boston very early the next morning.

Q Is Mr. Chapman in the record business?

A No, sir. He's, I believe, a director of a big savings and loan in Florida.

Q Did you arrange to feed all of these people while the rehearsals were going on?

A Yes, sir.

Q And where and how did you feed them?

A At the big table in the other living room, which is -- like, it is a family room, a big dining room and living room all attached.

Q Were the meals prepared in your kitchen?

A Yes.

Q By whom?

A By help.

Q And did everyone eat at that big table, as you have described it?

A Well, basically yes. But there were so many people that a couple of people might have eaten at another table.

There is another table in that room, too. But basically everybody ate in the same area, but there is one very large table that seats about 14 people, and most of the people were at that table.

Q During the meals at this table, was anything

said by anyone about the nature of the rehearsals and why they were taking place?

A Yes.

Q Can you tell the Court who said what to whom?

A There was a remark I made after listening to a couple of the riffs, "This album is going to be great and it is going to be an unbelievable thing."

John expressed the same type of views.

There was some discussion about how it was going to be marketed, that it was going to be on TV.

A few of the muciaisn asked how come they were rehearsing there --

MR. PRETTYMAN: I know you have not been sustaining objections dealing with general discussions, but I have to put my objections on the record where he is talking about general discussions where he is not saying who said what to whom.

THE COURT: I thought he said the musicians.

THE WITNESS: I did, sir.

THE COURT: Asked about the marketing, so I think --

THE WITNESS: Why were they rehearsing up there is what I believe I said.

THE COURT: Yes.

And what did you say?

THE WITNESS: I didn't answer.

Mr. Lennon said, "We are making this package for Morris. It is going to be a unique package, it's never been done before. It is an exciting project."

THE COURT: All right. I think we ought to take a recess.

(Recess.)

MR. PRETTYMAN: Your Honor, may I make a motion to strike the last testimony of the witness, unless he identifies which musicians were asking the questions.

The answer was so general we can't tell who said what to whom.

If all the musicians said that, he can say so, otherwise I move to strike.

MR. BERGEN: I join in the objection.

THE COURT: I won't grant that motion.

I would just ask Mr. Levy, do you remember what musicians asked, or don't you?

THE WITNESS: No, I couldn't remember.

THE COURT: That's okay. I will deny the motion.

Go ahead, Mr. Schurtman.

BY MR. SCHURTMAN:

Q Mr. Levy, during the discussions about the merchandising of this TV package, was anything said about

price?

A Yes.

There was a mention about it being a $4.98, somebody said --

THE COURT: Wait a minute.

I continue to remind you if you do remember who said what about price, you got to say so.

THE COURT: Yes.

MR. GRUMBACH: Your Honor, I am lost as to what meeting we are now discussing.

THE COURT: We are talking about the Sunday or that weekend occasion.

THE WITNESS: At the dinner table.

MR. PRETTYMAN: Is this around the dinner table?

THE WITNESS: Dinner, lunch, at various times we sat down as a group.

THE COURT: Go ahead.

A One of the musicians said, "What's this package going to sell for?"

I replied, "$4.98."

There was a remark, "That's ridiculous. That's too cheap for how good this is."

Q Who made that remark?

A One of the musicians.

I then went in to explain to the musicians how on TV it has to be sold cheaper because you got to get the people to write a check and mail it in and it takes an effort on their part and it has to be a great price.

Q Was this said in Mr. Lennon's presence?

A Yes, sir.

Q Did Mr. Lennon say anything?

A No.

Q Who paid for the expenses of housing and feeding the people thatweekend?

A I did.

I believe I was reimbursed from one of my companies, from Adam VIII. I'm not sure they reimbursed me. I think I was.

Q You say you had a piano at the farm?

A Yes, sir.

Q Did you also have the other instruments at the farm before the rehearsals?

A No. No, sir. Before the -- I'm not sure I understand what you mean.

Do you mean were there always instruments there before we set the rehearsals?

Q Yes.

A No, no. The only instrument we had at the farm

was a piano on a steady basis.

Q What other instruments were used during the rehearsals?

A There was a lot of amplifiers, guitars, drums. I think most of the stuff was amplification things for guitars and for bass and drums and things like that, drums.

The rhythm section instruments were brought up. There may be one I missed, you know, but there is basically the rhythm section instruments, because what they were doing was rehearsing the rhythm tracks.

Q Where did these instruments come from?

A I believe May Pang made arrangements to get them from a rental company, some of them, and some I think, some of the musicians brought with them, and we made arrangements to get them up to the country.

I'm not specific on that, Mr. Schurtman. I couldn't under oath say specifically what happened there. I was not involved in that, actually.

Q All right.

When did you leave the farm that weekend?

A I believe Sunday afternoon.

Q Did you leave with anyone?

A Mr. Lennon and May Pang, I think, drove back with me and I'm not sure if we gave a lift to somebody else.

It seems to me somebody else wanted a lift, because we didn't have the limosines there at the time and I may have taken somebody else back, but it's really not -- I couldn't swear it either way.

Q Did you have any conversations in the car with Mr. Lennon or Miss May Pang?

A Yes, that the rehearsals went -- John expressed that rehearsals went great, it was a great idea, it probably went faster than anything he ever did in his life. He would be in the studio probably by Monday and have it finished in three, four days.

And I said that was great.

By finished I don't mean the actual recording, either, Mr. Schurtman, the rhythm tracks.

And they were really doing a rip and tear and get to it and get it done.

Q Was anything said about when the album would be finished?

A As soon as possible. It was still in general terms as soon as possible.

THE COURT: I don't understand what you mean by "rhythm track."

THE WITNESS: If you would like, your Honor, I will try and describe that for the Court in our trade, ways

of how recordings happen.

THE COURT: Just one second.

MR. PRETTYMAN: Your Honor, can we have who said that it would be finished as soon as possible?

THE COURT: All right. Who said that?

THE WITNESS: John. John Lennon.

THE COURT: All right.

What about this rhythm track?

THE WITNESS: In recording today, your Honor, with -- it's changed in the last 15 years.

Q Mr. Levy, speak up, please.

THE WITNESS: What they will do is go into a studio and now they have as the highest, what we call 24 tracks. It is a very wide tape, your Honor, and each track you are capable of putting on one instrument, one voice, so that in final mixing you could get any balance you want of the various instruments or use a different track to sweeten, in other words, put a voice on this, you are not happy, punch it out, put the voice back and not waste anything of what was done prior.

So what is usually done, the first thing that is put down are the rhythm tracks, which would be the basic rhythms, the guitars, the bass, the drums, the piano.

The next thing that would be done would be

possibly voice, depending how the artist likes to work, or if you are bringing in saxaphones on one of the songs you want a saxaphone, you would put a saxaphone on one track.

Not in this case, but if you wanted fiddles, you would put fiddles on a couple of tracks and then mix it later.

You have complete control during the recording session of putting down what you want at a different session.

THE COURT: You mean if you are going to have a group of guitars, drums and singer, the guitars and drums are recorded --

THE WITNESS: Well, possibly.

THE COURT: -- and the singer does not sing, he just sings later?

THE WITNESS: That's right.

THE COURT: What does he sing to?

THE WITNESS: What happens is it may be even further than that.

You may take one track and put down the guitars.

Now, the singer will go into what is called an isolation box and it will be played back and simultaneously as it is being played back, what has been put down before

musically, he will sing to and that will be put on another track.

Q Mr. Levy, you held your hands to your ears. What was that supposed to mean?

A That was that the singer would have earphones on in the isolation box so, therefore, he would be able to sing to the music that is already recorded and put it on a different track on that tape so that it won't interfere later.

Q You mean he is listening --

THE COURT: And they play it back and if they don't like how it sounded in the live performance, they manipulate it with electronics?

THE WITNESS: Yes. They will erace him, even, and say, "Do it again."

THE COURT: Do they just manipulate it electronically to make it sound good even though it was not well performed the first time?

THE WITNESS: No, no, your Honor.

If there is a mistake it can be completely eraced and you can put it down on that track again.

THE COURT: Okay.

Q Was anything else said during that car ride back from the farm?

A Just he was tired, there was a lot of work done.

I told him he had a right to be tired, that everybody really put out and it was a very successful weekend as far as, really, doing eight or ten days of rehearsals in a three-day period.

Q Mr. Levy, what was your next connection with the situation?

What happened next?

A Let's see.

Now we are back.

I knew thatJohn was in the studio that probably most all that week because he was told me he was going in and subsequently I found out he was in.

That would take us to the end of October.

I had a couple of conversations, I believe, between that weekend and sometime in November.

THE COURT: Now, let's see.

Let's get the dates.

The weekend was Thursday night, the 17th.

THE WITNESS: That is the 17th, 18th, 19th and 20th -- wouldn't it, the Sunday?

THE COURT: So Saturday was the 20th when you drove back?

THE WITNESS: Sunday, I believe was the 20th.

THE COURT: Sunday.

A Was that it, Mr. Schurtman, Sunday the 20th?

A Yes.

THE COURT: So Monday, the 21st -- your counsel was asking you what happened that week.

A I was not involved, except maybe with a conversation.

They were recording. They were in the studio a great deal that week, Mr. Lennon and the musicians were recording the songs that they rehearsed up at the farm.

THE COURT: Go ahead, Mr. Schurtman.

Q Did anything else happen in October that you can think of?

A No, sir.

Q Let us move on to November 1974.

What, if anything, can you recall about events connected with this matter?

A Sometime in November, around the middle, I came into the club. I didn't know that John Lennon would be there. He was there early in the evening with, I think it is a part owner or an engineer from the studio with his wife and May Pang.

I joined them at the table.

John told me that day, he says, "It's finished.

I'm buying him dinner. We all worked hard. I don't want to hear the damn thing again. I have had enough of it. I'm that way after I complete an album. I get to hate them after I complete them, because I have done nothing but listen to this for a few weeks now, and it is your baby."

At that point I suggested that I would like to have the tapes.

He instructed -- I'm not sure who got up from the table here, Mr. Schurtman, I can't swear. Either May Pang or the engineer, or if he is a part owner of the studio, too -- I think I understood that he was -- got up, went to a phone. John told him to get the tapes. Called up, told them to bring a set of tapes over to the club.

An hour or two later the tapes were delivered to the club. John gave them to me and says, "It is your baby now."

Q Mr. Levy, I show you Plaintiffs' Exhibit 26A and 26B for identification. (Handing).

Can you tell the Court what these are?

A These are the tapes that were delivered to me that night.

Q Were they delivered in those boxes?

A Yes, sir.

Q Can you identify the handwriting on the boxes?

A Some of the handwriting was on there that night. There is additional handwriting that my people put on here, Mr. Schurtman.

Q What handwriting was on the box when it was delivered?

A It has handwriting here (indicating).

THE COURT: Wait. Keep your voice up.

A It has -- the writing that is in heavier ink, which is the same thing on the other package.

MR. SCHURTMAN: Your Honor, shall I offer these in evidence and then ask him to identify the handwriting or do it first?

THE COURT: That is really up to you. I haven't any preference at all.

MR. SCHURTMAN: All right.

Q Mr. Levy, on Plaintiffs' Exhibit 26A, there are eight numbered song titles.

A Yes, sir.

Q Whose handwriting is that, if you can --

A Somebody from the studio.

Q Was that on the box when you received it?

A Yes, sir.

Q And there is also other handwriting. Was that added later?

A Yes, sir.

Q Do you know by whom?

A By our people.

What was added later was the timing for each song, an assignment of a number, a master number of our catalogue, a master number for reference for our catalogue and some other engineering stuff here that I don't know.

Q And is the same thing true of 26B, the second box?

A That's correct, sir.

MR. SCHURTMAN: I offer 26A and 26B in evidence.

MR. PRETTYMAN: May I inquire, your Honor?

MR. GRUMBACH: I have no objection if you will just ask the witness about the reverse side that has writing on it.

MR. SCHURTMAN: The reverse side?

THE COURT: If you want a voir dire, you can ask questions.

MR. PRETTYMAN: I do want a voir dire.

THE COURT: All right.

Mr. Prettyman, lead off.

xx VOIR DIRE EXAMINATION

BY MR. PRETTYMAN:

Q You said that "Our people wrote on these

exhibits."

Who are "our people"?

A It would either be my A & R man.

Q Who is he?

A Fred Bailen. Or it could have been the engineer in the studio timing the selections to decide how it should go on the lacquer master.

Q If it was the engineer, who was the engineer?

A I'm not sure, Mr. Prettyman.

Q And by whom is Mr. Bailen employed?

A Roulette Records.

VOIR DIRE EXAMINATION

BY MR. PRETTYMAN:

Q Do I take it from your testimony that you are not sure whose handwriting this is?

A No, I could not testify whose it is.

Q Whose handwriting is it on the back of 26-A?

A I have no idea.

Q Is your handwriting on either of these exhibits?

A I don;t believe so.

BY MR. BERGEN:

Q May I ask whether Mr. Lennon's handwriting is on any of these exhibits?

A I don't believe so, because the boxes were delivered at his direction from the studio while he was in the restaurant.

BY MR. GRUMBACH:

Q You said you didn't know the persons who put this handwriting there? If I suggest to you it could have been someone either at Media Sound or Bell Sound Studio, would that refresh your recollection?

A It might be completely possible that one of them did.

Q Do you recall whether or not both of those companies had some involvement with these particular tapes?

A I could not tell you that, but it could have been either one or both. I could not answer that.

Q You were never aware that this tape first was taken to Media Sound for work and then to Bell Sound later?

A I believe it was, but I would not know who put that writing on.

MR. GRUMBACH: I have no other questions.

THE COURT: Is there any objection to these tapes? 26-A and 26-B?

MR. BERGEN: No, your Honor.

THE COURT: Received.

(Plaintiff's Exhibits 26-A and 26-B were received in evidence.)

BY MR. SCHUKMAN:

Q Mr. Levy, you testified that these tapes were delivered to you at the club that evening?

A Yes, sir.

Q What did you do with them?

A We were staying there for a while and Mr. Kahl was going home, and for safekeeping I gave them to Mr. Kahl and told him to bring them in with him in the morning, because after the engineer and his wife left John wanted to hang out in the club, Mr. Lennon wanted to hang out in the c[illegible]

Q Do you know whether Mr. Kahl, in fact, took them home?

A I believe he did.

Q And when did you see the tapes again?

A The first thing in the morning they were on my desk.

Q Did you play them?

A Immediately.

Q Mr. Levy, what speed are these tapes?

A 7-1/2 ips.

Q What does ips mean?

A Inches per second.

Q Is itpossible to make a commercial record 7-1/2 inch tapes?

A Yes, sir.

Q You have on occasion referred to master tapes. Would these two tapes, Exhibits 26-A and 26-B constitute master tapes?

A Well, that phrase is used loosely. The actual master tape is never sent out of the studio. Copies of that master tape are sent, like we would send out maybe 30 copies around the world to our licensees. The actual master tape never leaves a studio, at least, I would never want it to leave a studio or safe place.

Q Has your company ever produced any commercial records from 7-1/2 inch copies of master tapes?

A Yes, sir.

MR. BERGEN: In what sense is he referring to this?

THE COURT: I think he has to develop this. We will go one step at a time.

Q I show you Plaintiff's Exhibit 80 for identification. Can you tell the Court what this is?

A This is a list of various masters that I got from various record companies in the industry.

THE COURT: What is the number of the exhibit again?

THE WITNESS: 80.

THE COURT: This is a list of what?

THE WITNESS: This is a list of masters that I have leased from various record companies in the record business, where they supplied me with a 7-1/2 tape to use to make the records.

Q When you say you leased, what do you mean?

A My companies, various companies, that I leased to make packages. I leased these masters to make other packages.

Q Which of your companies?

A This might have been Roulette Special Products or Adam VIII or various combinations.

MR. SCHURTMAN: I offer this in evidence.

MR. PRETTYMAN:May I inquire, your Honor?

VOIR DIRE EXAMINATION

BY MR. PRETTYMAN:

Q This is headed 7-1/2 IPS Master Tapes submitted from various record companies. So I take it from that, Mr. Levy, that these are either songs or tapes that had been submitted from some other company to you or one of your companies?

A That is correct, sir.

Q Let's take No. 2, just by way of example, the song entitled "For Your Love." Would that be for a single recording of that particular song?

A I don't followwhat you mean.

Q In other words, this is not an album called "For Your Love"? This is asingle song called "For your Love"?

A This is what I described before, when we would take twenty different songs, masters, from as many as eight, or ten, or fifteen different company, we would compile an album from these songs and make one album, getting one or two or three from a company. This would be one of the songs

in a particular album.

Q "For Your Love" would be song for a particular album which your company was putting together to put out?

A Either to put out, to lease to Columbia or K-Tel, or put out ourselves.

Q And the artists who made "For Your Love" were Peaches and Herb?

A That is correct.

Q Now, CBS, what did they have to with this?

A They owned the master of Peaches and Herb. CBS sent me that tape.

Q And over here on the right it says Package Number and this says Crystal 500?

A That is whom I was making the package for, Crystal Corporation.

Q What is that?

A That was one of the first companies about eight or nine years ago who used to sell mail order packages on television.

Q Was that a company connected with your company?

A No, I was merely a packager in those days.

Q Is Crystal Corporation still in business?

A I don't believe so.

Q Now, who requested the 7-1/2 tape of this

particular song?

A We would not request it that way. I usually did most of that work. I would not request it that way. I would merely say if we made a deal, "Send me a master tape, a copy of the master tape."

Q Who would you say that to?

A Whoever I negotiated with at a particular record company.

Q I am asking you in a particular instance.

A At CBS I would ask of Al Shuman, if I was talking to him, or one of his subordinates.

Q So you called up Mr. Shuman and said, "Send me a master of "For your Love?"

A No, I would not work that way.

Q That is what I am trying to get. You tell me in your own words.

A I would call Mr. Shuman and say, "Al, I am making a package. I got a concept of rock and roll in the early '50s," or "I am making a group package of all the groups tht were around in '56 and '57, I would like to use the master Peaches and Herb, it fits in the package. What are you going to give me?"

He might say, "I want a penny and a half for every record sold."

I would say, 'Okay, you got a deal."

He would send me the tape.

Q You would not specify, hwoever, whether it was to be a 7-1/2 inch or a 15-inch tape or a 3-3/4 or whatever?

A No, copy of a master tape.

Q After you received whatever it was that they sent you what would you do with it? What would Crystal have to do?

A Crystal is selling; I was creating this package to sell and Crystal was the marketing company doing the same work that Adam VIII does now.

Q So you would take For Your Love and put it in with the other songs and your companies would create the tape of all of the songs together and then would you send it to Crystal?

A No.

Q Tell me how it would go?

A Put it all on one big reel. We would send it to a pressing plant, where they would cut the mothers and the stampers.

THE COURT: You would get for one proposed records tapes of different speeds? Is that what you are telling me?

THE WITNESS: Yes.

THE COURT: You might get 7-1/2 ips tape for one song and then 15 ips tape for another song?

THE WITNESS: That is correct.

THE COURT: Would you get these from different sources?

THE WITNESS: Yes, sir.

THE COURT: And then you would work to assemble these for one record with 15 or 20 songs?

THE WITNESS: That is correct.

THE COURT: After you would assemble your tapes of individual songs physically whatwould you do with those tapes to ultimately get therecord pressed,the ultimate record? Would you have some means of having that tape played and then recorded on another tape?

THE WITNESS: That is detrimental, your Honor, to record from one tape to another. Every time you do that, that is called degeneration.

THE COURT: I missed something in your testimony.

What do you do when you have this batch of maybe 7-1/2 tape and a couple of 15 tapes and so forth? What is the recording process that happens after you get those tapes in your possession?

THE WITNESS: If I may, I think if I show you

tapes that are here and that are on this list, I think I could describe it better for you.

THE COURT: Any way you want.

MR. SCHURTMAN: Which ones do you want?

THE WITNESS: All the tapes that are on this list as we received them from thecompanies.

BY MR. SCHURTMAN:

Q Let me show you, Mr. Levy,Plaintiffs' Exhibits 80-A and 80-B and 80-C for identification. I hand them to you. Tell the Court what they are.

THE WITNESS: This is one side of a package, your Honor, of a package that was made for somebody to sell.

THE COURT: 80-A? Is that what you are looking at?

THE WITNESS: This is 80-C, this is 80-A.

THE COURT: What is 80-A?

THE WITNESS: That is a package that was made for K-Tel.

THE COURT: That is a package?

THE WITNESS: This is a complete package.

BY MR. SCHURTMAN:

Q What is inside that box?

A A large tape.

Q Do you know what the speed of that tape is?

A It is 7-1/2 ips.

Q What does that tape represent?

A Side A of a package made for K-Tel, probably about 10 songs.

Q Did you make that package from this tape?

A Yes, but if I could have the little ones, I think I could clarify it for his Honor even better.

Q I hand you Plaintiffs' Exhibit 80-F for identification, 80-E, 80-D, 80-G, 80-J. Pick out anyone you want and then tell the Court which number you are looking at.

A I am looking at 80-I. Say I called on United Artists four tracks that Iasked United Artists to send me.

THE COURT: What do you mean four tracks?

THE WITNESS: Four masters.

THE COURT: This was sent you by United Artists?

THE WITNESS: That is correct.

THE COURT: Four masters?

THE WITNESS: That is correct.

THE COURT: And what speed is that tape?

THE WITNESS: 7-1/2 ips.

THE COURT: That is one of the things you

got. What did you do with that when you got it?

THE WITNESS: Say we get four here and three another place and two another place, a total of 20, we are making a package of 20, we would have our engineer put these on a large reel, the reason being, your Honor, that while you are cutting the lacquer master it is difficult to stop --

THE COURT: Just before you get to the reason, you say you would have your engineer put all these on a master reel?

THE WITNESS: A large reel, just a question of size.

THE COURT: How would you do that?

THE WITNESS: By just copying it. There are some variations. It is not locked in.

MR. SCHURTMAN: Shall I try to question the witness about this?

THE COURT: I am puzzled how you get from the reel that he is given by United Artists, for example, to this large reel. Is it done by recording or by some other device? I don't know.

BY MR. SCHURTMAN:

Q Mr. Levy, when you get a copy of a master tape which could be either 7-1/2 ips or 15 ips, or some other speed --

A Yes?

Q Now, you get a copy of such a master tape from, say, United Artists?

A That is correct.

Q Now,when you get that what do you do with it next?

A I give it to my engineer.

Q What would your engineer normally do with that last tape? With that copy of the master tape?

A Well, there are two ways he can create the lacquer master;there are two things he could do.

Q What is the first thing?

A First we give a sequence of how we want the masters to run, in other words, program it so that he knows which song follows which.

Now, in cutting a lacquer master, what physiclly happens is a large acetate is put on a cutting machine that cuts grooves into the acetate master. Now, he couldtake this tape in sequence and place it so it hits that machine and cuts the grooves in the lacquer master as it goes. If he wants to, he could transfer them all in one big reel as 7-1/2 and run them all through at one time, or he could keep switching these tapes; he could do it either way.

Q Hold it one minute. When you say he transfers the copy of the master to a big roll, how does he do that physically?

A Two tape machines, but he does not have to do it that way. I am not sure --

THE COURT: We are just being bogged down. I don't know what difference it makes, but if it makes a difference there ought to be a way, without spending another half hour, for me to understand it and Mr. Prettyman understands it.

I think that Mr. Prettyman simply started asking you, if I recall, what would happen to the 7-1/2 tapes after you got them.

Now, I don't need to have an awful lot of technical detail, but what I do need to know, to understand, whether a 7-1/2 tape is good, bad or indifferent. You get the 7-1/2 tape from United Artists?

THE WITNESS: That is correct.

THE COURT: You are ultimately interested in getting that in shape for a stamper?

THE WITNESS: For a lacquer master.

THE COURT: For a lacquer master from which a mother is made?

THE WITNESS: That is correct.

THE COURT: From which a stamper is made?

THE WITNESS: Yes.

THE COURT: So we got to get it on a lacquer master. Now, what is it that makes a lacquer master? It is a needle going into acetate?

THE WITNESS: It cuts.

THE COURT: The needle is going along and kind of vibrating?

THE WITNESS: I think you say it better than I do.

THE COURT: What causes the needle to vibrate in the right way so it makes those grooves from the lacquer master?

THE WITNESS: Playing this 7-1/2 into a tape machine.

THE COURT: I want to go back before that.

THE WITNESS: Playing the tape into a machine that goes into that cutting machine.

THE COURT:So you play a tape and the machine picks up the vibrations from that tape and cuts?

THE WITNESS: Exactly as you describe it, sir.

THE COURT: Are you telling me that you can play the original -- original is not the right word -- you can play this thing that you get from United Artists

into this machine and that machine will directly cut a lacquer master?

THE WITNESS: Yes, sir.

THE COURT:Now, then, you say there is another way that you may set it up to play into the machine that makes the lacquer master? What is that other way?

THE WITNESS: The other way just would be the engineer's option, which would be to take the four, put them on one big reel.

THE COURT: You just tape them together?

THE WITNESS: Yes, play it continuously, rather than stopping the operation in the middle.

THE COURT: Physically, would it involve taking the tapes that you get from these different souces and cutting them and putting them together physically in one long tape?

THE WITNESS: Yes, sir. Sometimes it is done that way, too.

THE COURT:Is there another way that it is done to make a long tape or reel?

THE WITNESS: Yes, you may also if you have got some various speeds and you could not do that, you might take and recopy them all at one speed and play them all back through the machine.

THE COURT: Let us suppose you had some songs on a 7-1/2 tape and some on a 15 tape. Now, in theory you could just paste all those together and when it came to the 15 you just rev up your machine?

THE WITNESS: I don't know if you could really do that. I guess you could.

THE COURT: You really do not want to take that chance?

THE WITNESS: I am not familiar with that part of it.

THE COURT: In other words, if you are going to have one long reel, you want each part of it to be played at the same speed?

THE WITNESS: Yes, sir.

THE COURT: How did you get such a reel again? Maybe you have told me. I don't understand.

THE WITNESS: Well, you could take that 15 and copy it again at 7-1/2.

THE COURT: When you say copy, physically what does that mean? You are playing this tape on a machine?

THE WITNESS: At 15.

THE COURT: And it produces amplification of whatever you call these vibrations and then you are going to put those vibrations on another tape at 7-1/2?

THE WITNESS: Yes.

THE COURT: So that is re-recording?

THE WITNESS: Yes, that is exactly what they supplied me if they did, their recording at 15 or --

THE COURT: Just take it easy. In other words, if you want to take your batch of tapes, some 7-1/2 and some 15 and you want to put it on one long reel at one speed, that means just re-recording it?

THE WITNESS: Copying it.

THE COURT: That means you take the sound from one and put it on another one?

THE WITNESS: That is copying, your Honor.

VOIR DIRE EXAMINATION

BY MR. PRETTYMAN:

Q You said you could take that and convert it into a 7-1/2? Can you take a 7-1/2 and convert it into a 15?

A You could, but I don't know how it would be.

THE COURT: What is it you can do and can't do?

MR. PRETTYMAN: He testified in answer to your question that you could take a 15 ips and convert it into a 7-1/2 ips. My question was whether you could take a 7-1/2 ips and convert it into a 15. I believe his

answer was that you could possibly do it, but he didn't know how good it would be.

THE WITNESS: It could be done; there is nothing to stop you from doing it.

BY MR. PRETTYMAN:

Q Is it done normally in the industry?

A I don't think so. It might be.

Q Why?

A Why do you want to go the other way? We would want to save space and you reduce it down.

Q Suppose you wanted to put out --

MR. SCHURTMAN: Your Honor, we are going way beyond the voir dire.

THE COURT: Let us get organized. We started some time with the offer of Exhibit 80 for identification and then, Mr. Prettyman, you conducted a voir dire and then everybody started questioning and we got all these other exhibits.

MR. PRETTYMAN: I will go right to this exhibit, if I may, so that I understand it.

BY MR. PRETTYMAN:

Q Taking For Your Love, which you got from CBS, tht is their song?

A They own the master rights.

Q If they had that in 15 and you wanted it in 7-1/2 they could convert it to 7-1/2, if I understand your testimony?

A I never asked for it that way.

Q You never asked?

A As I said earlier in my testimony, I just asked for a tape.

Q And so the point of this exhibit is that this is to show, as I understand it, that each of the companies under this column Record Company chose to send you when you asked for a tape a 7-1/2 inch tape for you to make the album out of?

A That is correct.

Q Could it have been possible that one of the companies on the right-hand column, such as Crystal or K-Tel or Dynamic House, could have requested the tape, rather than your companies?

A No.

Q It had to be your companies? And you merely asked for a tape and the record company decided to send you a 7-1/2?

THE COURT: He said that about four times.

THE WITNESS: Yes, sir.

MR. PRETTYMAN: I do want to pin it down.

THE WITNESS: That is correct.

Q And that is true of each of these companies in these columns? That is really the point of the exhibit, isn't it?

A Yes, sir.

MR. PRETTYMAN: No further questions.

THE COURT: I got a second sheet.

THE WITNESS: These are additional masters, your Honor.

THE COURT: Is there any difference? The first sheet has a list that I guess is 1 through 21 and the second sheet starts in and has another list 1 to 20?

THE WITNESS: It is the same thing, except I think the second sheet is one package completely put together. That is one package called 20 Power Hits that was made for K-Tel?

THE COURT: Wait a minute. The last column -- go back to the first page, if you will -- the last column at the right in each case, what do you call it? The issuer or publisher?

THE WITNESS: The issuer or title like Soul Train, your Honor. I will start at the top. Crystal was a company I used to make packages for in the middle '60s and late '60s. K-Tel I made packages for.

THE COURT: You call it the publisher?

THE WITNESS: The seller, the same as Adam VIII.

THE COURT: Why don't you take that and mark the top of it with the word "seller." In the third column, add the word "source,"record company source. And you look at the second page and add record company source.

THE WITNESS: This is a little different here.

THE COURT: What is the difference?

THE WITNESS: On the last page it is one seller. So we have the publsiher's titles on there. There is one difference. In other words,the fourth column on the second page, that is publisher. That is who we got our copyright licneses from, because that is one package. It went to one persen.

THE COURT: Well, you better mark that "Publisher Source of Copyright." Add that.

THE WITNESS: Source of Copyright.

THE COURT: And then Record Company Source. And you might as well write at the top Seller K-Tel.

THE WITNESS: K-Tel. It says album K-Tel.

THE COURT: It is not all that clear.

MR. PRETTYMAN: Can I ask him who compiled the list?

THE COURT: Sure.

BY MR. PRETTYMAN:

Q Who compiled this list?

A I put this package together.

Q So you presently are familiar with it? You put it together?

A No, this was supplied to me by my office. When you people say 7-1/2 could not be made, I went to my office and we got all the 7-1/2 tapes that were supplied to us.

Q You say "we".

A The people in my office.

Q Did they do it under your direct supervision?

A Yes, I told them to do it.

Q And did you check it after they did it to make sure it was correct?

A I assume --

Q Did you check it?

A I didn't physically. I said, "Get all the 7-1/2 lists out of the library and make a list."

Q Are you satisfied of your own personal knowledge that this is an accurate and correct list?

A I would say so.

Q And that it stands for what you testified to?

A Mr. Prettyman, I assure you I want it to be as accurate as possible.

THE COURT: Any more voir dire on Exhibit 80? Are there any objections to Exhibit 80?

MR. BERGEN: None, your Honor.

THE COURT: 80 is received.

(Plaintiffs' Exhibit 80 was received in evidence.)

MR .SCHURTMAN: Your Honor, we offer as exhibits all of the 7-1/2 tapes that are listed on Exhibit 80. I don't know if it is necessary to put them in physicaly, since there is acompliation the 7-1/2 copies.

THE COURT: If there is any challnege to the accuracy of this list, I want to know about it. I am not going to go through and check the speeds of all those, I can assure. But if any defendant wants to check this out, you can all my attention to an error. But subject to that, there is no reason for all this underlying material. You are just representing that it is available and has been marked for identification. It is available for defense counsel to use in any way they wish.

MR. PRETTYMAN: The challenge will be done later, not now.

THE COURT: Yes.

MR. SCHURTMAN: We will keep them available.

THE COURT: All the 7-1/2 tapes that are referred to in this Exhibit 80?

MR.SCHURTMAN: That is correct,your Honor.

THE COURT: I think we will take our luncheon recess.

MR. SCHURTMAN: May I ask the witness two more questions on this point?

THE COURT:Yes.

BY MR. SCHURTMAN:

Q I show you Exhibit 82-D for identification, a copy of an album named Soul Train. Was this put out by Adam VIII?

A Yes.

THE COURT: Who put out Soul Train?

THE WITNESS: Adam VIII.

Q Now, to clarify the co-relation, Mr. Levy, would you look at Exhibit 80, item No. 19 on the first page?

A Yes, sir, Band of Gold.

Q The song title is Band of Gold. The artist if Freda Payne. The record company is Invictus. And then the package column states that it was included in Soul Train No. 8004?

A That is correct. In other words, it should have

been Adam VIII there. It gave reference to what package it was in.

Q Is Exhibit 82-D for identification the same Soul Train Adam VIII No. 8004 that is referred to in Plaintiffs' Exhibit 80?

A Yes.

Q Does that mean a 7-1/2 tape of this song Band of Gold was used in making Plaintiffs' Exhibit 82-D?

A Yes, sir.

Q And the title of the song appears on the cover of 82-D?

A Yes, sir.

MR. SCHURTMAN: I offer 82-D in evidence.

MR. BERGEN: No objection.

THE COURT: Received.

(Plaintiffs' Exhibit 82-D was received in evidence.)

THE COURT: We will recess until 2:15.

(Luncheon recess.)

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AFTERNOON SESSION

2:15 p.m.

(Trial continued.)

MORRIS LEVY, resumed.

CONTINUED DIRECT EXAMINATION

BY MR. SCHURTMAN:

Q Mr. Levy, do you know a gentleman named Michael Graham?

A Yes, sir.

Q Who is he?

A He is an attorney with one of the firms --

THE COURT: Speak up.

A He is an attorney with one of the firms that represents John Lennon.

Q Do you remember a meeting between you, Mr. Graham and Mr. Seider?

A Yes, sir.

Q When did that meeting take place?

A Sometime in November.

Q Of 1974?

A Yes, sir.

Q Where did that meeting take place?

A Club Cavallero.

Q What time of day?

A In the evening, I believe.

Q Can you tell the Court what was said at that meeting and by whom?

A Most of the conversation was with Mr. Seider and myself.

We discussed the costs, again, on the package, how much it would cost me --

MR. PRETTYMAN: Objection, your Honor.

THE COURT: Okay. Again, just tell us who said what?

A How did this meeting come about?

THE WITNESS: Mr. Seider and I just decided to meet. We had been talking on the phone and he wanted me to meet with Mr. Graham.

THE COURT: I mean, if you had been talking with Mr. Seider on the phone and if it is relevant, you better bring it out.

What were all these conversations or these conversations between you and Mr. Seider step by step?

Who said what?

THE WITNESS: There was a conversation I think, sometime in November between Mr. Seider and myself where --

THE COURT: On the telephone?

THE WITNESS: Yes.

Where there was some discussion --

THE COURT: Wait a minute, now.

Who was calling who?

THE WITNESS: I think I called him.

THE COURT: All right.

You called Seider.

And this was in November?

THE WITNESS: Yes.

THE COURT: What did you say?

THE WITNESS: Was he going over to London.

He was supposed to have been going. I was checking to see if he was going over.

THE COURT: I mean what was said?

THE WITNESS: That he believed that Len Woods was coming to America and --

THE COURT: Len Woods?

THE WITNESS: Len Woods.

THE COURT: Go ahead.

THE WITNESS: And he believed he was coming here and it won't be necessary for him to go over there to discuss the European part of the deal.

MR. PRETTYMAN: Could we have a date on that, your Honor?

THE WITNESS: I couldn't -- I honestly couldn't

give you a date.

It could be late October, early November, it could be in that area. I couldn't honestly give you a date.

THE COURT: All right.

Go ahead with what was said.

THE WITNESS: That was it, that he was going over to London and that he expected Len Wood to come to America and he would discuss it with him about the European situation.

That's the crux of the --

Q Did you have another telephone conversation with Mr. Seider which led up to this meeting with Mr. Graham?

A He said he was going to be in town --

Q Who said?

A Mr. Seider.

Q In that same telephone conversation?

A No, I think it was subsequent.

Q Who called whom?

A He might have called me on that one.

Q Do you recall?

A No, I couldn't be -- I think he called me.

Q What did he say?

A That he was going to be in town and if we had dinner we could -- he wanted me to meet with somebody and we

could discuss some other things.

Q Where did Mr. Seider normally live?

A He worked out of California more than he did in New York.

Q Did you discuss anything else during that telephone conversation?

A No.

THE COURT: He didn't specify any particular topics?

THE WITNESS: No, no.

Q Did you arrange to meet with him and the other person?

A Yes.

Q At the Club Cavallero?

A Yes.

Q And you then had that meeting?

A Yes.

Q Do you remember the date of the meeting?

A Sometime in the middle of November. I don't know the specific -- the exact date.

Q What did you and Mr. Seider and Mr. Graham discuss, and tell the Court who said what.

A Mr. Seider said to me that in Europe it would be an easier deal to wrap up if I was interested in making

it a joint venture.

Q A joint venture with whom, did he say?

A With EMI, as EMI was thinking of going into the mail -- the mail order business had grown very heavily in England and Germany, it became very big over there. It was comparatively knew in England and Germany.

Q What did you say?

A I was not interested in it.

Q What did he say?

A It might make things easier as far as the European situation went, it made sense.

And I told him that basically in Europe I usually licensed other people, I personally was not set up to operate it in Europe and that most of my stuff in Europe was licensed to other people who did it in Europe and I made packages for other people in Europe and that it didn't make sense to me.

Q And what did he say?

A Then he said, "Let's go over the finances of it. Might be good."

We wrote some numbers down and if the other people were doing the selling and it was a joint venture and we put it together, so a number like 23 cents I remember as the bottom line, and I said, "That's less than I would

make just licensing it to somebody"--

THE COURT: Wait a minute. I am not with you.

Who mentioned this 23 cents and in what context?

THE WITNESS: Well, the context, your Honor, was, like, we wrote down, like, the price of --

THE COURT: Who wrote down what?

THE WITNESS: I was, like, showing him on a piece of paper why it didn't make sense in Europe.

Like, we wrote down the cost of manufacturing there, the copyright royalties, the cost of TV in England, which is very expensive because there is only one group of stations you can buy, and the cost of manufacturing and the profit margin was much smaller.

THE COURT: Let me interrupt you for just a minute.

(Pause.)

THE COURT: While we are waiting, have you worked out any schedule?

MR. SCHURTMAN: Your Honor, Mr. Prettyman has indicated to me that he would like to put Mr. Brown on at 2 p.m. tomorrow.

I have told Mr. Prettyman that I have a witness who has to leave town tomorrow. I would like to put him on, if possible, in the morning.

MR. PRETTYMAN: I didn't mean 2 p.m., I meant after lunch, whenever you want to come back from lunch.

THE COURT: I am going to ask you to consider something, also.

I have found, particularly in non-jury cases, that one way to expedite the case is to do the following:

Get the direct examination of the main witnesses for both sides on, forget cross, at least temporarily.

What will very often happen is, a witness for plaintiff gets on the stand, he gives his version of the facts, the defense has its idea about the facts and they go through a lengthy cross examination trying to get the plaintiffs' witness to admit the defense version.

There are other purposes sought, but a lot of times that goes on. They are very eager to get the defense version out so they ask a lot of questions on cross.

Sometimes it isn't very successful. A lot of times there is a lot of time wasted on cross examination.

The way to put on the defense case, obviously, is through the defense witnesses. And so what I have been able to persuade people to do occasionally, and it seems to me it has worked to some good advantage, is let's have the main witness or witnesses for the plaintiffs' side, forget cross temporarily, get the main witness or witnesses for

the defense side on, hear the two versions.

Then a lot of times after that the defense isn't very interested in cross examining the plaintiff, they have gotten their version on through their own witnesses, which is the way they ought to get it on.

We have had a lengthy examination of Mr. Levy, all of which has been very necessary. But I am going to ask the defense to hold off on the cross examination of Levy temporarily and just put on their case.

Who is the main witness to these events? Get him on and let us hear your version. You may wake up a day or two from now and wind up not nearly cross examining Mr. Levy that much.

There is no jury here. I can come back and hear the cross examination of Mr. Levy at a later point. I am very flexible, but I am also interested in using the time to the best advantage.

So you think about that and I am going to urge you to do that.

Okay.

Q You said that you were writing down figures at that meeting.

A Yes.

Q Do you remember anything else that was said at

that meeting?

A I basically rejected the joint venture and I said I was not interested in it at all and there was no way that I wanted to do the joint venture.

There was no more discussion between me and Mr. Seider about going to England, if Mr. Wood was coming.

I think by that time he hadn't arrived and he was due and he said he was not coming.

I'm not -- I discussed with Mr. Seider when we would be getting a written contract. I think I mentioned that at that meeting.

Mr. Seider replied that I should be patient, it meant some extra money to John by the delay as there was no very important things happening in the overall Beatles situation which would give John -- would mean more money to John.

I questioned him about what was happening. He says he was not at liberty at that point to discuss it, but to bear with him, that there was something happening that would be very beneficial for John and this contract would be -- he would be better off if he waited a little while longer with this agreement.

Q Did that conversation about a written agreement take place at that meeting?

A I believe so, yes.

Q Was anything said by anyone at the meeting about call the deal off?

A No, sir.

Q How did you leave things at the end of the meeting?

A That we were still moving ahead.

Q Who said that?

A I did and he did. That, you know, things are progressing nicely.

He was happy that the recording sessions went so well and so fast and we said we would finalize it, you know -- we would get the written thing as soon as it was to John's benefit.

I couldn't find out at that point what was going on.

Q Did Mr. Graham say anything in the course of the meeting?

A He askedme some questions about costs and things like that there.

He was interested in everything that was taking place. But it was in general. It was, like, it was done and he was asking some questions for his general knowledge.

Q Do you remember anything else about that meeting?

A That's about it, basically.

Q Do you know a man named Frankie Crocker?

A Yes.

Q Who is he?

A He is one of the leading disc jockeys in New York City and program direct for a station in New York.

Q Do you recall a conversation that included you and Mr. Cocker and Mr. Lennon?

A Yes.

Q When did that conversation take place?

A My best belief is that that is the same night that Mr. Lennon came in with -- the night I got the tape and came in with the engineer for the owner of the studio and his wife and that he stayed very late that night.

I believe it was that night quite late, Mr. Schurtman.

I'm really not prepared to swear, but my best knowledge and belief is it was that night.

Q Where did that take place?

A At Cavallero.

Q Can you tell the Court who said what in this conversation and how it came about?

A Yes.

That particular night we were all drinking

lot of whiskey as we got into the evening. We stayed there until about 4 o'clock in the morning and we closed the club.

Mr. Croker came by at about 11 o'clock, I guess. I really, you know, can't pin that down on timing.

When he saw me with Lennon, he came right over to the table. I introduced John Lennon to Frankie Crocker.

Crocker was quite enthused about meeting Mr. Lennon. Mr. Lennon was very enthused about meeting Crocker. Both said very nice things to each other, such as -- John said, "I listen to your station all the time. It is one of my favorite stations in New York."

They discussed music, they discussed old records, records. The conversation was basically about music and t s that happened to people on tours and just music in general, the music industry.

They got along very well.

At one point John told -- we started to talk about my album that was coming --

THE COURT: Okay now.

Again, who said what?

A I probably brought out that John had just finished recording an album for me --

MR. PRETTYMAN: I am sorry to interrupt, your

Honor, but I do have to object and I have a continuing objection to the use of the word "probably" in here.

I know you have overruled this before, but I have to protect my record, sir.

THE COURT: What record is there to protect on that point?

MR. PRETTYMAN: Because if a witness talks about what probably happened as opposed to his best recollection as to what actually happened, I think it makes an awful lot of difference.

MR. BERGEN: I join in the objection for the same reason, your Honor.

THE COURT: Okay, that is overruled and you don't need to repeat it.

Okay, go ahead.

THE WITNESS: What was the last thing I was saying?

Can you tell me?

(Record read.)

A Frankie and John Lennon got into a discussion about the album. We told Frankie what it was about

THE COURT: Now wait a minute.

A I told Frankie what some of the selections were. Mr. Lennon told him how much fun he had making it and it was

a kick and it was coming out on my lable.

Frankie offered to play the album in its entirety on his radio station and would John come up and give him an interview and he would be the first one in the country to play the album.

John said he'd love to do it, gave Frankie his telephone number to contact him. Frankie gave him his telephone number to contact him.

Mr. Lennon told Mr. Crocker that if he wanted to hear -- and this is his exact words -- "If you want to hear the album, Morris' album, go up to his office, he'll be glad to play it for you," which Frankie did the following day.

He came to my office and I played the album for Mr. Crocker.

We then stayed there until about 4 in the morning and we discussed everything from the Arab-Israel situation to the concert tour.

THE COURT: Who?

THE WITNESS: May Pang was there, too, sir, the four of us. I'm sorry.

And we stayed there until about 4 in the morning discussing everything from the Arab-Israeli situation to concert tours to fun things that happened in the career of

Frankie and John liking R & B music and Frankie liking the Beatles, their music. It was just a very pleasant and --

Q How did Mr. Lennon refer to the album?

A Morris' album.

Q He told Mr. Crocker.

A Excuse me, there was one other funny thing that happened that night that I think has a bearing.

In the normal business, your Honor, we solicit disc jockeys to play our records as a record company.

In Adam VIII's operation, we don't send them to disc jockeys to play.

So I said to Frankie, "If you are going to play the whole thing, I'm probably going to charge you $4.89 and it is a cute thing that jockeys want this outfit. I think we will do a switch. Instead of romancing disc jockeys to have them play their records, I will charge you $4.08."

Q Did you tell him that in John Lennon's presence?

A Yes. I said it was a complete switch from most record companies because you are usually chasing after jockeys saying, "Please play my record, please play my record."

Q You said Mr. Crocker came to your office to hear the album?

A The tape is what I meant.

We called it an album that night. We didn't break it down and say it is a tape. We were talking it was the album.

It was just words.

He came to hear the tape, which is the album.

Q Did there come a time, Mr. Levy, when you and Mr. Sneider had a further conversation about EMI's consent in relation to either foreign rights or retail fulfillment centers, or both?

A At one point there, I really can't -- this is also sometime in November, Mr. Schurtman.

Mr.Seider told me that as far as the U.S. was concerned, he was sad that we could go ahead and no permission was needed from anybody, and he said we could go ahead.

At that point there, I told he discussed it, had he discussed it with Capital records.

He says he didn't and it was not necessary to.

And I told him, I says, "Harold, let me explain something to you.

Just out of good taste Capitol should know, because if I was a record company and I had an important artist and a record was coming out on another label, I think I wouldn't want to find it out through the street rather

than have you discuss it with me prior to its coming out. I think it is just in good taste you talk to him about it, even though you are telling me to go ahead, and let them know in front."

MR. BERGEN: Your Honor, may we have when this was and whether this was in person or on the telephone, your Honor, please?

MR. SCHURTMAN: I will ask him.

THE COURT: He has said at one point in November.

MR. BERGEN: Can we have a little bit further clarification as to when?

THE COURT: I tel' you, I think it is fine for you to ask questions, but you do have your own -- I am going to defer cross.

Try to date these as best you can.

THE WITNESS: I couldn't, your Honor, that's why I said sometime in November.

THE COURT: I think you said so.

Was this on the telephone or in person?

THE WITNESS: I ve it was on the telephone. It was on the telephone.

Q Was anything said in that conversation about the foreign rights?

A He still had to get clearance on the foreign

rights.

Q Was anything said about retail fulfillment centers?

A It was okay to go ahead.

Q On the retail fulfillment centers?

A Yes.

Q Did there ever come a time when you discussed foreign rights again?

A The next time I saw Harold Seider, I believe, was in December down in Florida.

John Lennon, his son, my son and myself, we were in Disney World. We had spent the first day there, the four of us, going around Disney World.

John got a call from Harold and Harold had to see him very quickly.

Harold flew down and met us in Disney World.

The following day John didn't leave his room all day, stayed with Harold going over some papers, and I took May Pang and the two children around Disney World.

At that point there Harold explained to me what he meant in November and what was happening, because I asked him about the contract.

He says, "It's very close now. The papers I brought down --"

THE COURT: Wait a minute.

This was at Disney World, right?

THE WITNESS: Yes, sir.

THE COURT: And was this after the day that Mr. Lennon and Mr. Seider had conferred together?

You described such a --

THE WITNESS: Yes, Yes. This was probably --

THE COURT: So it was after that day of conferring together?

THE WITNESS: Right.

Then they had three more days of conferring together.

THE COURT: At what point did Mr. Seider and you talk?

THE WITNESS: After that day we --

THE COURT: After that day?

THE WITNESS: We had dinner -- we all had dinner together and we were going to return to Palm Beach, and Harold told me what he had in mind what he discussed with me in November.

THE COURT: Wait a minute.

This was at a dinner the night after the first days --

THE WITNESS: No, no. I think I'm not telling it

properly to your Honor.

THE COURT: You turn around so you can face everybody.

THE WITNESS: I don't think I told you properly, your Honor.

THE COURT: Let's go back.

THE WITNESS: It wasn't at the dinner in that sense, it was -- we had dinner that night and there was a moment there or so when Harold and I were alone. I asked him about it, and he said --

THE COURT: What did you ask him?

THE WITNESS: What was happening.

THE COURT: About what?

THE WITNESS: About everything, the contract -- about my contract, the foreign rights and, you know, what was happening in flying down like that.

And he said, "This is what I meant in November. The papers I brought down with me are very important. It's the break up of the Beatles.

This is what I meant when I told you November would take a little while for the written agreement. These papers have to be signed by the end of the year.

THE COURT: Okay.

THE WITNESS: I accepted that.

THE COURT: What did you say?

THE WITNESS: I said, "Great. Then we're coming to a point."

We left the following morning.

THE COURT: Wait. You said, "Great"?

THE WITNESS: Great, you know, it's all wrapped up and now we can really -- you can give me, you know, my written agreement and everything is working out the way you want it and I know John is going to be happy with what's going down, too.

THE COURT: Was that the end of that conversation?

THE WITNESS: Basically, yes, yes.

THE COURT: Okay, go ahead, Mr. Schurtman.

A The following morning or early afternoon -- no, I think the kids wanted to go through the park again for a few rides and I think we left, like, about 11, 12 o'clock.

THE COURT: Left Disney World?

THE WITNESS: Disney World for Palm Beach.

We drove to Palm Beach.

Q Who is "we"?

A Harold Seider, May Pang, the two boys, Mr. Lennon and myself.

When we got back to Palm Beach, Mr. Seider and

Mr. Lennon went up to the apartment I had gotten for Mr. Lennon and, basically, we didn't see John Lennon for about two days, except possibly he came down for a bite of lunch or in the evening.

He stayed in the apartment with Harold for a day or two, and also informed me -- we were talking about possibly staying a few days later.

He said he had to leave on the 29th -- could be the latest he could leave, because he had to be in New York, these agreements had to be signed before the end of the year.

THE COURT: Who said that?

THE WITNESS: Mr. Seider explained that, that they had to leave because the agreements had to be signed -- Seider may have left even a day earlier than John.

THE COURT: When is this, this trip to Disneyland? This is December?

THE WITNESS: I believe, your Honor -- I'm not exactly sure of these dates.

I think John Lennon arrived in Florida around the 19th -- the 22nd of December.

THE COURT: Did Mr. Lennon go directly to Disney World with his son?

THE WITNESS: No, no.

I think we stayed in Palm Beach --

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THE COURT: I tell you, give me the whole story, would you?

THE WITNESS: Right, sir.

I arrived in Florida the very early part of December --

Q Mr. Levy, excuse me for interrupting.

Let us back up one moment.

Did you invite Mr. Lennon to come down to Florida?

A Yes.

Q This was for the Christmas holidays?

A As my guest, yes -- as the company's guest.

Let us get back to the moment when you invited him.

How did that happen?

A Oh, one of the meetings in late November, early December he was telling me his son was coming over.

Q Over from where?

A From England.

And I told him that I had custody of my son over the Christmas holidays and I was taking him down to Palm Beach and whenever I take him to Florida he makes me take him to Disney World.

And John told me his son had seen Disneyland,

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but he hadn't seen Disney World.

I says, "If you want to come down, I'll get you a nice place -- I can get you a place and we can take both kids."

And he liked the idea and he says, "Can you do it for me?"

And I said, "Fine."

And I rented an apartment for him and his son in the same place I was staying.

Q When you say you rented an apartment, who paid for it?

A Adam VIII -- Lou Garlick got me the apartment, but Adam VIII paid for it.

THE COURT: Wait a minute.

You say you got Mr. Lennon and his son an apartment in the same place you were staying?

THE WITNESS: Yes.

THE COURT: That was where, in Palm Beach?

THE WITNESS: Sun and Surf in Palm Beach.

THE COURT: All right.

When did Mr. Lennon go down?

THE WITNESS: I think he arrived on the 22nd, your HOnor.

THE COURT: Of December?

THE WITNESS: Yes, sir.

THE COURT: When did you go down?

THE WITNESS: Oh, I left early December. I went down there a week or -- I had been there a week or so earlier, maybe even earlier.

I don't swear on that, your Honor, what date, but I was there already.

THE COURT: About when was the trip over to Disney World?

THE WITNESS: I have to run that down through my mind.

Let's see.

He arrived around the 22nd.

Can you check if Sunday night is the 22nd, please, from my calendar, because I think it was a Sunday night.

Q December 22 is Sunday.

A Okay.

THE COURT: You went to Disney World when?

THE WITNESS: He arrived 22. We went after. I think we went on the 26th, your Honor. I could verify it. I think we left on the morning of the 26th to go to Disneyland. I could not swear to it. I think it was the 26th, your Honor.

THE COURT: Were you with Mr. Lennon from the 22nd to the 26th?

THE WITNESS: Yes. We stayed in the same building. Mr. Garlick had a cabana at the pool.

THE COURT: Did you eat meals together?

THE WITNESS: Dinner; breakfast, never.

THE COURT: Did you talk about this matter involved here?

THE WITNESS:Not very much on the trip, your Honor, no.

THE COURT: Did you talk at all to your memory?

THE WITNESS: We talked a little bit about doing the commercial. John said he really wanted to get involved in that and there were some difficulties. He said that he would like to do the commercial.

BY MR. SCHURTMAN:

Q You mean the television commercial?

A Yes, we talked about that, but there was no

heavy discussions at most any point daily between Mr. Lennon and myself.

Q During the conversations you had with Mr. Seider and/or with Mr. Lennon during this period you have just described in Florida, did you or Mr. Seider or Mr. Lennon say anything about calling this deal off?

A No. As a matter of fact, Mr. Seider said we were at home plate as far as the written agreement, because when this is over it simplifies John's entire life; this is probably the best thing that has ever happened to John.

THE COURT: Now, you got at a point where you said that back at Palm Beach there were extensive discussions between Mr. Seider and Mr. Lennon, and then Seider said that they had to go back to New York at the end of the year, something like that.

THE WITNESS: Yes.

THE COURT: And then we broke off. Now, take it up again from there.

THE WITNESS: The weather was very beautiful and John prior to Mr. Seider's arriving said he might stay a few extra days. I talked to the people in the building about possibly holding the apartment for a few extra days. After the discussions with Seider I think it was Harold who came to me and said either they discuss that

John was to be back, he must be in New York before the end of the year to sign the matters we had been reviewing the last few days.

THE COURT: Will you read that?

(Answer read.)

Q That you had been reviewing?

A No, not I, the dissolution of the Beatles.

Q Had you seen those discussions?

A No, not at all. These discussions were up in the room. Nobody was ever there. The fact, the last couple of days I had my meals with my boy and the Garlicks, and Harold and Mr. Lennon stayed together all day long reviewing these papers.

Q Do you remember anything else being said about this matter that we have in court now?

A I don't believe so.

Q Let's back up a minute, Mr. Levy. Did there come a time when Big Seven assigned its rights in this deal to Adam VIII?

A Yes.

Q I show you Plaintiffs' Exhibit 28 for identification. Can you identify it for the Court?

A Yes, this is the assignment from Big Seven to Adam VIII.

Q What is the date?

A December 11th.

Q Did you sign that assignment?

A Yes, sir.

Q On whose behalf?

A Adam VIII.

Q Who signed on behalf of Big Seven?

A Pnilip Kahl.

MR.SCHURTMAN: I offer it in evidence.

BY MR. GRUMBACH:

Q Mr. Levy, I notice this document has been re-stapled. Do you see the holes where it was first stapled?

A Yes

Q It has been stapled again?

A Yes.

Q Do you recall having that document in front of you at the first trial before Judge Mac Mahon?

A Yes.

Q Do you recall that on that date you testified that it had only been stapled once?

A I believe so.

Q Do you recall on that date I asked you some questions about the second page of this document?

A Yes.

Q Now, let's turn to the second page.

Did you tell me at the prior trial that the second page of this document was unchanged from the way that it had been originally prepared?

A I believe so, yes. This is only the Scheule A.

Q I know what it is. That is not the point of my question.

Now, was Schedule A, in fact, attached to the front page of this document on the date that you executed it?

A I don't know. It may have been. It may not have been. I could not swear to that.

Q Read, if you will --

MR. SCHURTMAN: Excuse me, your Honor. May I interrupt on just one minor point.

Mr. Grumbach, you raise a question as to the additional staple marks since the first trial before Judge Mac Mahon. I can explain those if I may. Judge Griesa asked us to make additional copies, and I understand that my associate, Mr. Diamond, pulled out the staple and Xeroxed additional copies. I will be glad to put Mr. Diamond on the stand for that purpose.

MR. GRUMBACH: I think my point was quite simple. I just want to make it clear when this witness

first identified this document it had been stapled only one time and was intact, and the witness testified that the second page was as it had been originally.

BY MR. GRUMBACH:

Q I suggest, Mr. Levy, that the second page has some markings at the bottom? Is that correct?

A Yes.

Q Bottom right-hand corner?

A Yes.

Q And those markings were placed on the exhibit at the time of the deposition in this case on June 5th, weren't they?

A Yes, sir.

Q That was your deposition, was it not?

A Yes.

Q Is it not this piece of paper that was attached for the first time when this document was introduced before Judge Mac Mahon, is not Schedule A a photocopy?

A Of what?

Q Is not this a Xeroxed paper?

A I believe it is.

Q Doesn't the Xerox also include the reporter's identification of the document as an exhibit?

A I believe it does.

Q Now, Mr. Levy, this document with the reporter's notations, this being a Xerox, how was this specific piece of paper attached on December 11, 1974, to the front page?

A I don't follow you.

MR. GRUMBACH: Maybe the reporter could read the question.

THE COURT: Well, it could not have been done that way. That is not a very helpful question.

MR. GRUMBACH: Your Honor, this is rather significant.

THE COURT: I am not arguing that it is not significant. I just want you to ask a proper question. You are asking about something that is impossible. It is just an argument.

Ask a question or make the argument.

MR. GRUMBACH: I object to the admissibility of this document and I suggest that this document was never put together in the form in which it is being sought to be introduced and there was no schedule on December 11th, 1974.

THE COURT: What is the answer to that?

MR.GRUMBACH: Let me point out that this document was first given us attached to a bill of particulars and at that point we only got the first cover page. We then

asked where the second page was and we were supplied with a copy. We have never seen the original.

THE COURT: Mr. Schurtman, what about that?

MR. SCHURTMAN: I am at a loss. What I can't find at the moment is the original deposition exhibit. Mr. Grumbach is correct that the second page, which has the deposition reporter's stamp on it, is a Xerox of a copy that had the stamp on it.

Now,obviously, there must have been some document which had the original stamp on it, but I can't find it.

THE COURT: May I see that?

MR.GRUMBACH: The significant thing, your Honor, is when this document was introduced before Judge Mac Mahon it had only been stapled one time.

MR. SCHURTMAN: That I have explained.

MR. GRUMBACH: It could not have had anything else attached because it had only one staple hole.

THE COURT: Were you at the deposition of June 5th, 1975?

MR. GRUMBACH: Yes, your Honor.

THE COURT: Now, there must have been a reporter who had some sheet of paper on which he put a stamp and he wrote the number 1 and he wrote 6/5/75, and he didn't write it in Xerox.

MR. GRUMBACH: That is correct.

THE COURT: Where is the thing the reporter stamped and wrote on. You saw him do it.

MR. GRUMBACH: Yes, sir.

THE COURT: What did he do it on?

MR. GRUMBACH: On that type of sheet which was at that time a Xerox itself and it was never attached to the front page.

THE COURT: Was it at that time separate?

MR. GRUMBACH: It was separate and we had previously been given the front page with no attachment in response to a bill of particulars. And we raised the question then where was Schedule A? And as a subsequent date to June 5th what purported to be Schedule A as a Xerox without the reporter's mark was produced separately. And the significant point is that at the date of this trial before Judge Mac Mahon for the first time we got this.

THE COURT: I will sustain the objection.

MR. SCHURTMAN: Your Honor, may I offer the first page of the exhibit as to which there is no dispute? The assignment?

THE COURT: What about that?

MR.GRUMBACH: It is half a contract.

THE COURT: That is a matter of argument.

I tell you, I think you better go back and lay a foundation. You have the lawyers making statements as to the procedures and all. But I think you better go over it again with Mr. Levy in view of all that has been said. If you want to take this Exhibit 28 apart I don't think any harm will be done by doing that, because these sheets are of a slightly different nature as to their form. You can take Exhibit 28 for identification apart, and if you want to lay a foundation, do so. Let's mark the second page Exhibit 28-A.

MR. PRETTYMAN: May I suggest to you, sir, that the exhibit makes no sense without the second page.

THE COURT: I think we have to get the testimony of the witness.

Let's mark the second page as 28-A and then you try to lay a foundation for one or both or whatever you want to do, Mr. Schurtman.

(Plaintiffs' Exhibit 28-A was marked for identification.)

THE COURT: Exhibit 28 will be the first page; Exhibit 28-A will be the second page, both for identification.

BY MR. SCHURTMAN:

Q Mr. Levy, I direct your attention to Plaintiffs' Exhibit 28 for identification.

First of all, is this any sort of a standard form that your companies use?

A Yes, sir.

Q For what purpose do you use that form?

A We only use it, really, to satisfy our accountants, because I am the head of both companies. It is used because our accountants advise us when deals are between us there must be a paper for the Internal Revenue Service. That is why we make sure it is done with every package that is put out by Adam VIII, strictly for Internal Revenue Service an advice for accountants. I see no need for that, except for that.

Q When the Big Seven Music Corporation licenses a master to Adam VIII Limited, do you normally use this type of a form?

A Basically Big Seven leased masters before to Adam VIII; Roulette Special Products handle it.

Big Seven first got its hands on some masters only because of the previous lawsuit.

Q Now, who typed this particular agreement which has been marked as Plaintiffs' Exhibit 28 for identification?

A I have no idea.

Q Was it someone in your office?

A Probably.

MR. PRETTYMAN: I object, your Honor.

Q Do you know?

A No.

Q Can you tell from the typewriter?

A No.

Q Who handed this exhibit toyou when you signed it?

A I can't be sure of that, either.

THE COURT: Who is the signature on behalf of Big Seven?

THE WITNESS: Phil Cahl.

THE COURT: Phil --

THE WITNESS: Cahl.

THE COURT: The first name is P-h-i --

THE WITNESS: P-h-i-l.

THE COURT: Philip?

THE WITNESS: He only signed it P-h-i-l.

THE COURT: And Cahl, C-a-h-l?

THE WITNESS: Yes.

BY MR. SCHURTMAN:

Q Now, did you sign this agreement on December 11, 1974?

A Yes.

MR. GRUMBACH: Let me object to the form of the question.

THE COURT: Overruled.

Q The first part of this agreement reads as follows, and I will read it up to the schedule as a foundation for my next question: Big Seven Music Corp. does hereby grant to Adam VIII Limited the exclusive right, privilege and license to advertise, distribute and sell disc and/or 8-track cartridges manufactured from the masters listed on the attached Schedule A which are either owned or leased by Big Seven Music Corp..

Now, was there a Schedule A prepared at the time you signed this agreement?

A I could not answer that, either. There probably was. As I testified earlier, Mr. Schurtman, when we are talking about money many times we entered into agreements and prepared the schedules as we got the stuff together.

MR. GRUMBACH: Objection.

Q You don't know for a fact whether the schedule was prepared at that point?

A I couldn't honestly answer that.

Q Now, the agreement says: Attached Schedule A which are either owned or leased by Big Seven Music Corp.

and all together formed the package entitled John Lennon Sings the Great Rock and Roll Hits, and then in parentheses (A8018).

Now, at that time, on December 11th, had you or anyone in your organization decided what songs would be included in this package?

A We were told already. They sent us the 15 or 16 songs in the two boxes. That was the projected masters, the tapes that we received from Mr. Lennon.

Q Was it contemplated by your two companies that the songs on that 7-1/2 master tape would be the package that was being licensed?

A Yes, completely.

Q What songs are listed on that schedule?

A It looks to me as the 15 songs in the two tape boxes.

MR. SCHURTMAN: Your Honor, I will offer the two exhibits separately.

THE COURT: Go back to Exhibit 28. It refers to masters which are either owned or leased by Big Seven Corp. Had Big Seven Music Corp. or did Big Seven Music Corp. own or lease these masters as of this time?

THE WITNESS: We have felt we did, your Honor, because the masters were delivered in November.

Those are the masters that this lawsuit is about; they were delivered to us in November for us to use to settle the Big Seven lawsuit. I think I can explain that, if you like, your Honor. And we make this type of contract. Usually our package companies will let special products -- I don't know the legal aspects of it, but I can make an oral agreement between both companies.

THE COURT: I think you have explained that before. Are you telling me that you believe that these masters went to Big Seven because Big Seven was a party who had settled the original lawsuit?

THE WITNESS: That is correct, sir.

THE COURT: Now, there is an offer on both 28 and 28-A. As far as the argument that 28 makes no sense without 28-A, that really doesn't make it inadmissible. Mr. Levy said he signed it and it is enough to get it into evidence. I will receive 28.

Now, as far as 28-A, right now 28-A, as far as the record shows, is simply a list made at some point which we do not know containing names of the songs that are on the tapes delivered to Mr. Levy. When Schedule A was made up we don't know. I mean, we can only receive a list of names. But you are not really putting it in to show a list of names. You are putting it in as

Schedule A, part of this assignment. What basis is there for me to admit it for that purpose?

MR. SCHURTMAN: I appreciate the problem. May I offer it at this point subject to connection?

THE COURT: We always forget subject to connection. You keep it in mind. I will sustain the objection to 28-A at the present time.

If you have a later reason to offer it again, you offer it again.

MR. SCHURTMAN: We will try to clarify it at a later point.

MR. GRUMBACH: Your Honor, I assume that you have overruled the objection to 28, and I would just like to refer your Honor to the pages of the deposition in which this came up.

THE COURT: No, that goes to weight. I will receive 28. You can introduce evidence trying to destroy its weight. That comes at a later time.

(Plaintiffs' Exhibit 28 was received in evidence.)

BY MR. SCHURTMAN:

Q Mr. Levy, when did you return from Florida to New York?

A Early January.

Q Now whenyou got back to your office early in January did you find awaiting you a letter from the Marshall, Bratter law firm?

A yes, sir.

Q I show you Plaintiffs' Exhibit 35 for identification. Is this the letter?

A Yes.

MR. SCHURTMAN: I offer it in evidence, your Honor.

MR. BERGEN: No objection, your Honor.

THE COURT: Received.

(Plaintiffs' Exhibit 30 was received in evidence.)

Q Did you do anything when you received Plaintiffs' Exhibit 30?

A Yes, sir.

Q What?

A I called Mr. Dolgenos, the lawyer who sent me the letter.

Q What did you say to him and what did he say to you?

A Why didyou send me this letter? We have made a new deal going back to October. And there was no purpose. What is the letter all about? His answer was,

"Harold Seider was in the office at the end of the year and he suggest I drop it to you and I have only done what I am told. If you made a new deal it don't mean anything."

Q What don't mean anything?

A The letter. If you made a new deal with them it didn'tmean anything.

Q The new deal does not mean anything?

A No, the letter don't mean anything.

Q Did you say anything else to him?

A I said, "I don't understand it. It doesn't make any sense," and that was it, and then I called Harold Seider.

Q Did you have a telephone conversation with Mr. Seider?

A Yes.

Q What did you say to him and what did he say to you?

A I said, "Harold, what is happening? Why did I get this letter when I returned from Florida?"

"Strictly formality: it doesn't mean anything and I will be seeing you during January. Everything is moving along nicely."

THE COURT: Let me have that last answer.

(Answer read.)

Q Did you do anything else about this letter?

A I wrote a letter to Mr. Dolgenos. I told Harold I am going to answer the letter, and I wrote a letter to Mr. Dolgenos.

Q Did you write this letter to Mr. Dolgenos?

A Yes, sir.

MR. SCHURTMAN: I offer it in evidence.

MR. BERGEN: No objection.

THE COURT: Received.

(Plaintiffs' Exhibit 31 was received in evidence.)

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Q Mr. Levy, in this letter you make the statement, and I am reading from the middle of the letter, "In accordance with the agreement reached during those negotiations, John Lennon has recorded 16 sides."

Did John Lennon record 16 sides?

A I believe there are 16 songs. We were going to put them on 15 sides. There is a medley of two in the package, too, Mr. Schurtman.

I think it is "Ready Teddy" and "Rip It Up" is really two songs done as one song.

THE COURT: Okay. Now, let's go back.

What is a side?

THE WITNESS: A master, one cut. That goes back to the single days when one song was on each side of the record. It was called a side. It is still used sometimes in the --

THE COURT: All right.

Go over that again, Mr. Schurtman. I don't understand it.

Q My question to you, Mr. Levy, is, did Mr. Lennon record 15 songs or 16 songs?

A Actually, there is, I believe 16 songs. There are two songs that are a medley in one -- one cut. It may have happened twice, even, in the album. It may be

there twice that there are two songs on one cut. I'm not really sure.

Q You also state in your letter that you will market the 16 sides throughout the world by use of television advertising.

Had you and Mr. Seider or you and Mr. Lennon worked out anything on the subject of foreign rights by the time this letter was written?

A No, not really, except that Harold had -- in my discussions with Harold, he said that the Beatles had broken up now, that everything as far as the foreign would even be easier.

MR. PRETTYMAN: Can we have a date for that conversation, your Honor?

THE COURT: Let me just hear the answer first and then we can get that.

THE WITNESS: The conversation, when I called Harold about receiving the first letter, he also said that everything went smoothly on the break up of the Beatles and that John would have a lot more flexibility about the foreign rights.

But in all honesty he didn't say, "I got them" yet.

THE COURT: All right.

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May I hear that answer, please, again, Mr. Reporter?

(Record read.)

THE COURT: We will take a break now.

(Recess.)

BY MR. SCHURTMAN:

Q Mr. Levy, after you sent your letter to Mr. Dolgenos, dated January 9th, 1975, Plaintiffs' Exhibit 31, did you receive a reply?

A No, sir.

Q Did you ever receive a reply to that letter?

A No, sir.

Q What happaned next in this situation?

A I got a call from Harold Seider that he was coming into New York in a couple of weeks with Mr. Alan --

THE COURT: I want to interrupt you.

Exhibit 31 has been offered and received, has it not?

MR. SCHURTMAN: Yes.

THE COURT: I just want to get my notes straightened out.

Incidentally, you should have asked to have introduced -- are any of the parties in the courtroom?

MR. BERGEN: Yes, your Honor.

THE COURT: All right.

Who is in the courtroom?

Are any other representatives of the plaintiffs here?

MR. BERGEN: Yes, Mr. Phil Cahl is sitting over there.

THE COURT: Mr. Cahl.

Who else is in the courtroom?

MR. BERGEN: Mr. Lennon has been here since the beginning of the trial and Mr. Seider has been here since the beginning of the trial.

THE COURT: Okay.

Those are the individuals and then the others are corporations.

All right, thank you very much.

Q You say you received a --

A I'm sorry, I inadvertently told you a mistake then. That isn't what happened. I was just sitting here as his Honor was talking and it didn't happen that way. Can I correct that?

Q Tell me what happened.

A I called Harold Seider because I heard a rumor that --

THE COURT: I don't know where we are.

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THE WITNESS: We are in January --

THE COURT: Are you amending your answer about never receiving a reply to the letter?

THE WITNESS: No, no, no, sir.

THE COURT: Then what was the next question? Could you start in?

Q Let us start again.

You never received a reply to the January 9 letter, is that correct?

A Yes, sir.

Q What happened next in the case?

A I heard a couple of rumors that Capitol was thinking of putting out the album.

Q Putting out which album?

A The Roots album that I was working on with John Lennon, the masters that were in that album.

I called Harold Seider about it and confronted him with it.

He said in a week or ten days he'd be coming in to New York with Alan Coury, who was a vice president of Capitol; we'd sit down and resolve the matter, have patience and it will all work out.

I agreed to wait the ten days to two weeks.

THE COURT: You called Mr. Seider where?

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THE WITNESS: California, I believe, sir.

Q Did you tell Mr. Seider that you had heard rumors that Capitol was putting out these masters as an album?

A Yes.

Q And what did he say?

A "It's not happening. I'll be in and I'll sit down with you, and I'm bringing in the marketing guy from -- the head of promotion and marketing of Capitol and we're going to sit down and discuss it and work it out."

Q Did such a meeting take place?

A Yes and no.

Q Could you explain that?

A On the date that we had the appointment, which I think was around January the 30th, Mr. Seider came to my office alone.

He said that Alan Coury did come into town with him, was going to meet us there, but got a call from California not to sit down with me. And that's the first time Mr. Seider told me all bets are off, Capitol won't give permission, they were putting out the album themselves.

Q Who was?

A Capitol.

Q What did you say?

A I used some profanity and told him he was a

liar, they didn't need permission, I knew it from the Alan Klein deal when I was working on the Beatles package. I accused him of playing a game.

I then called my attorney while he was there, which is you, Mr. Schurtman, and asked him to come right over, which you did.

Q Did you say anything else to Mr. Seider?

A We argued back and forth.

He said "It was not that way, believe me, Morris. Our intentions were good. We couldn't get permission, that's what it is. We really wanted to do it, but --" he was coming out that it was not him or John, it was strictly the pressure from Capitol and EMI.

Q And what did you say?

A I used profanity again.

Q What happened next at the meeting?

A I called you. I asked you to come right over, which you did, and I started telling you what had taken place.

Q Was this in front of Mr. Seider?

A Yes.

And we had a little more discussion about it.

Then Mr. Seider said he had to leave.

Q Did you say anything to Mr. Seider about putting

out this record yourself?

A Yes.

After you were there a while we discussed it in front of him.

I told him I was coming with the album, too.

Q And what did he say?

A He said he would get an injunction.

Q And what did you say?

A I says try.

Q And what did he say?

A They would.

Q Did he say anything else?

A Probably profanity again.

Q Was anything else said in the conversation between you and Mr. Seider?

A I guess there was other things said, Mr. Schurtman, but it was basically all in the vein I just described, him telling me his side of it and me getting angry.

Q Did Mr. Seider then leave?

A Yes.

Q Did you do anything at that point about going ahead with the production of the Adam VIII album?

A Yes.

Q What did you do?

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A I called in different people in my organization, had everybody go off in different directions, one to get the pictures, because we then realized -- I also did one other thing prior to that. Mr. Schurtman.

I called May Pang and I tried to talk to John Lennon and I couldn't get through to John, and I said to May, I said, "May, we are going ahead with the packaging. If there is anything that John -- if he's got a special picture or something to be done here, I'll be very happy to accept it and do it. Get back to me, because if not we are still going ahead."

Q What did she say?

A She'd get back to me, but I never heard from her, thought.

Q Did you ever hear from Mr. Lennon?

A No, sir.

Q What specific actions did you take in connection with the production of the album?

A Well, there were some things already in the works in the sense of story boards were talked about, you know, on ideas for the TV --

MR. PRETTYMAN: I didn't hear that, your Honor. I'm sorry.

THE COURT: Okay. You go over that again.

A There were some things that were just in discussion stages, like maybe story boards for the TV commercial. Our different ideas are laid out on story boards.

I think I testified to that earlier in this court.

There may have been four or five different ideas for commercials on story boards.

MR. PRETTYMAN: I object. I think this is different from probably.

THE COURT: Yes, sure.

Look, Mr. Levy, a moment ago Mr. Schurtman asked you what you did after these conversations with Seider and so forth and you said you called in different people.

Just go over that step by step.

THE WITNESS: I called in Fred Bailin, who is the A & R man for Roulette.

Q What is an A & R man?

A Artist and Reportoire.

THE COURT: His name is Fred --

THE WITNESS: Bailin.

Q What does a A & R man do?

A Supervises recording for artists, supervises the engineers, supervises the cutting of lacquer masters, supervised editing.

THE COURT: He is an A & R --

THE WITNESS: Artist and Reportoire.

Q Was a lacquer master cut?

A I gave him the tapes, told him to cut lacquer masters.

Q Are those the tapes that were delivered to you that evening at Cavallero?

A Yes, sir.

Q What did you do about making a jacket for the album?

A I sent a man working for us by the name of Jim Balitsos, told him that we had to buy pictures of John Lennon as they probably won't coperate now, to get ahold of various --

THE COURT: I am sorry. You called in --

THE WITNESS: Jim Balitsos. He was in charge at that time of TV Sales.

MR. GRUMBACH: Can we have who he worked for, your Honor?

THE COURT: All right.

Q Who did he work for?

A Adam VIII.

Q What did you tell him?

A To find pictures -- there are photographers who

pictures of famous people that they have the rights to, and I told him to buy a bunch of pictures of John Lennon so we can pick a suitable picture for the cover and probably to use in the commercial as we won't have live footage with John, being the thing took a turn in this direction.

Q Did you do anything about getting the covers printed?

A Well, that would be a step towards that, Mr. Schurtman.

From these pictures you would pick the one you will use on the cover, then you will make up a -- then the artist will come in and do a mock lay up and then you would give it to the printer to print.

Q Did you place an order with a printer?

A No. You wouldn't do that that day.

Q But did you at some point place an order with a printer?

A Yes.

Q With which printer did you place the order?

A Ivy Hill.

Q Is that the company that Mr. Lou Garlick is chairman of?

A Yes, sir.

Q And did you place an order for pressing?

A Not that day, either. That wouldn't be done until after the printing.

Yes, we eventually did place an order for pressing.

Q And with whom did you place that order?

A I couldn't honestly tell you that right now.

Q You don't remember the pressing plant?

A No.

Q Did you --

A By the way, when you say did I, Mr. Schurtman, I physically didn't place an order for the printing, either.

I would tell somebody order printing or order pressings.

If I am giving the impression that I picked up the phone and called up and ordered pressings, that would be misleading the Court, I didn't.

Q I see.

I stand corrected.

Did you instruct anyone in your organization to order the pressing?

A Yes.

Q Whom did you instruct?

A Not that day, again, this would still be a bit

down the road.

Probably Fred Bailin.

Q Do you know for a fact that the pressing order was placed?

A Yes.

Q Was anything done about making TV commercials?

A Yes.

Q Whom did you instruct to make the commercials?

A Jim Balitsos and Joel Levinson. We were working on two commercials at once to see which one would come out better.

Q And were the commercials, in fact, completed?

A Yes.

Q Were these filmed commercials to be shown on television?

A Yes, sir.

Q Did you instruct anyone in your organization to buy television time?

A Yes.

Q Whom did you instruct?

A Mr. Schurtman, whoever was in charge of Hunt Media, and I'm not sure who was at that time, but I instructed whoever was in charge of Hunt Media to start blocking out TV time but I'm not sure who the party was then.

There has been a change in Hunt Media.

Q I think you have identified, but could you give Hunt Media again.

A It's the in-house advertising agency.

Q Do you know whether they, in fact, placed order for television time?

A I know, in fact, that they did.

Q With how many stations?

A I don't know that, but there was -- they were getting into quite a few markets. It would be a wild guess if I told you how many stations.

Q Was it more than one or two stations?

A Yes, much more than one or two.

Q Were all the stations located in New York?

A No.

Q Where were they located?

A Various parts of the country.

THE COURT: I am not clear on the chronology.

Go back to the conversation which you had with Mr. Seider which Mr. Schurtment joined.

Are you with me?

THE WITNESS: Yes, sir.

THE COURT: Then you said you called Miss Pang trying to get through to Mr. Lennon and you recall describing

that. Right?

THE WITNESS: Yes, sir.

THE COURT: Was your call to Miss Pang right after and on the same day as --

THE COURT: Yes, sir. Within --

THE COURT: -- as the conversation with Seider and Schurtman?

THE WITNESS: Yes, sir. Within minutes after that.

THE COURT: All right.

Would you know the date when the conversation with Seider and Schurtman took place?

THE WITNESS: I believe it is the 30th, your Honor, of January.

THE COURT: You said you called in Fred Bailin?

THE WITNESS: Yes.

THE COURT: You said you called in Jim Balitsos?

THE WITNESS: Yes, sir.

THE COURT: When was it you called in Fred Balitsos?

THE WITNESS: Within an hour after Mr. Seider left.

THE COURT: Did you call in Jim Balitsos at the same time or --

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THE WITNESS: Yes.

THE COURT: I think you indicated, but this is where I didn't catch it very well, what had you done toward the production of the record and the jacket and toward the TV ads and so forth prior to calling in Fred Bailin and Jim Balitsos that day?

THE WITNESS: We had prepared a couple of tentative story boards on the TV commercial which prior to the meeting with Seider we would have submitted to John Lennon to work with him on it.

THE COURT: What are story boards?

THE WITNESS: Story boards, your Honor, are a commercial -- a commercial either takes about 50 seconds or a minute and 45 seconds, and what we do is -- you got a limited amount of words, so you create the footage, the film or the picture of the words that will be spoken as that is on a large board.

The pictures are put in a sequence that they will be in on a TV commercial, the words that will be showing while the picture is on the TV commercial so it is laid out what will be said as it is showing.

That's called a story board.

THE COURT: And two tentative story boards had been prepared?

THE WITNESS: I think there may even have been three, your Honor.

I think where I got the two is I told them to shoot two commercials, because we didn't have any time, and I think two commercials were completed in the next ten days.

THE COURT: I want to know --

THE WITNESS: About the story boards, sir?

THE COURT: What had been done by the time you called in Fred Bailin and Jim Balitsos.

THE WITNESS: The three story boards.

THE COURT: Three story boards?

THE WITNESS: Which we were going to submit basically to John Lennon.

THE COURT: You said a couple of tentative story boards. Is it a couple or is it three? What is your best memory?

THE WITNESS: I had said three, your Honor.

THE COURT: All right.

MR. PRETTYMAN: Your Honor, are you through with that series on the story boards, because I have a motion.

THE COURT: No. Who had prepared these?

THE WITNESS: These were prepared by the people who work for me as possible suggestions. I had not seen them until that day.

THE COURT: What people?

THE WITNESS: Joe Levenson and Jim Ballistis.

THE COURT: Who is Joe Levenson?

THE WITNESS: He is in charge of the sales at Adam VIII in the retail fulfillment side of it. He also works on commercials.

THE COURT: And you had instructed Joe Levenson and Jim Ballistis to do this?

THE WITNESS: They had done it prior to this date, your Honor.

THE COURT: On their own initiative?

THE WITNESS: On their own initiative, preparing for what we were going to submit to John Lennon.

THE COURT: Had you seen these story bodies?

THE WITNESS: No, sir, I had not seen them until this date, because when we called them in and said we have to get to work, they had some story boards completed already, tentative story boards.

THE COURT: Had anything else been done towards the production or advertising of this album prior

to the time you called in Ballistis that day?

MR. PRETTYMAN: May I make my objection?

THE COURT: Just a minute.

THE WITNESS: No, we were waiting for John, because John was going to basically be involved in all facets of the picture of our work, everything. I would have respected him to the point of letting him make all final decisions on that.

THE COURT: What is your motion?

MR. PRETTYMAN: There was a motion to produce and a request for production of documents during his deposition and so forth. We made requests which would have covered this particular item, namely, any story boards that would have existed. We didn't name them as story boards, but any papers that went into the production of the album. They were never produced. This is the first mention we heard of story boards during the entire course of the case, and I think that since they were called for and were not produced, unless they had been destroyed, that this testimony ought to be stricken.

THE COURT: What about that?

MR. GRUMBACH: May I supplement Mr. Prettyman's motion in at least two places where we called for that?

THE COURT: We will get to that. What are the

places you want to refer to?

MR. GRUMBACH: I am referring first to plaintiffs' interrogatory No. 24: Describe and identify by date all preparations taken by Adam VIII to which reference is made in paragrpah 17 of the complaint. Further identify any contracts, agreements or expenditures entered in pursuance to such preparations.

Response: Adam VIII began to look for photographs and plan the jacket.

Then I refer to responses and objections of plaintiffs to defendant Capitol Records' interrogatories, and, in particular to No. 15: Identify each document constituting -- that is wrong. I am sorry. I should be referring to item 14: Identify each document -- no. That is wrong.

BY MR. SCHURTMAN:

Q Mr. Levy, what happened to the story boards that you had been testifying about?

A I beg your pardon?

Q Do you know what, if anything, happened to the story boards you just mentioned?

A No.

THE COURT: The point is, why wasn't the fact of the story boards disclosed in the discovery? Was it

not asked about?

MR. SCHURTMAN: Speaking for the attorneys, we were not told about the story boards and we never saw them.

THE COURT: Well, that is not really an answer. In their interrogatories the defense attorneys asked what preparations were made.

MR. SCHURTMAN: We checked with the people at Adam VIII, including Mr. Levy, including employees of Adam VIII, we said, "Give us everything that was used in preparation."

They didn't give us any story boards. The first time I heard about story boards is when Mr. Levy testified before Judge Mac Mahon, at which time no objection was made. So for the first time I am conscious of the fact of the story boards. The story boards never came up before.

MR. PRETTYMAN: I don't want that statement to mean we waived anything.

MR. SCHURTMAN: I am not saying you waived it. I didn't mean it in that sense. The first time I heard about story boards and the first time my associates did was at that time.

THE COURT: I don't think you get the point.

MR. SCHURTMAN: I will take out the story boards.

THE COURT: I will strike the testimony about the story boards because I think it should have been covered in the discovery.

I do think as long as we are getting into the facts about what preparations were made beginning on that day, you ought to try to get in the chronology of what you are bringing out.

MR. SCHURTMAN: A few days later the album was completed and released. It is getting to that fact.

THE COURT: He has testified in response to your questions that there were certain instructions given by him on the 30th of January. Then he testified in response to your questions that at a later point he ordered the printing of the cover or instructed that such an order be made. He also gave instructions at a later point that an order be placed for the pressing of the records and so forth.

Now, either now or in due course you better bring out the timing on those things.

MR. SCHURTMAN: We have all the orders and documentation, and I had really planned to offer them as part of my case in damages. I was really just trying

to focus now on the fact that the album was produced and get the date when it came out.

THE COURT: You go ahead in your own way and maybe we will catch it. If anything more is necessary, we will ask.

MR. SCHURTMAN: I didn't think the detail was appropriate at this point.

BY MR. SCHURTMAN:

Q Mr. Levy, I show you Plaintiffs' Exhibit 34 for identification. Would you identify it for the Court.

A This is the album that we produced, the cover and the record and the album we put out, the John Lennon album.

Q When did that album come out?

A Some time in February.

Q Let me rephrase the question.

When was it completed?

A I don't know the exact date -- a week, ten days after we started, probably. We moved very quickly. I don't know the exact date, Mr. Schurtman. There is a date on record that it was officially released.

Q Would it refresh your recollection if I suggest February 7th?

THE COURT: Is there an official release date

or something like that?

MR. SCHURTMAN: I am advised it was February 7th.

THE COURT: Is there any dispute about that?

MR. GRUMBACH: Your Honor, I believe there is documentation that orders for some of the work was on February 9th, if I am not mistaken.

MR. BERGEN: I think the advertising did start on either the night of Friday the 7th or the 8th, that weekend.

THE COURT: I keep asking about chronology. I don't know whether these dates make a bit of difference. It was early February.

What in general happened? Did you start advertising?

THE WITNESS: We started advertising even before the album was ready. There was a commercial.

THE COURT:On TV?

THE WITNESS: Right.

THE COURT: About when did you start advertising?

THE WITNESS: Around February 7th, I would say. That is maybe why they call that the official date, your Honor.

THE COURT: Was this a mail order or retail?

THE WITNESS: Strictly mail order. We could not move it in retail because we would have to prepare so many more pieces.

THE COURT: Did you have the records?

THE WITNESS: WE would have to have some records. A time element comes in. If it is on television Friday, an order would be in to us by Monday or Tuesday. We have another week before we would need the product. So we could start advertising even a few days before the records were made.

THE COURT: Did there come a time when you got a batch of records ready and packaged in order to fill mail orders?

THE WITNESS: Yes, sir.

THE COURT: Did they come in from a pressing plant?

THE WITNESS: Pressing plant to RCA, Indianapolis, to the Fulfillment Center. They were shipped at the Fulfillment Center.

THE COURT: Was there a time when the first batch was shipped from RCA to the Fulfillment Center?

THE WITNESS: Not from RCA. To the RCA Fulfillment Center.

THE COURT: When was that?

THE WITNESS: I would guess that to be four or five or six days after the commercial started.

THE COURT: Did RCA release these?

THE WITNESS: I am not sure who did.

THE COURT: What did they do?

THE WITNESS: They were the Fulfillment Center. They did the actual mailing for us as they got the check and the slip. I don't know what plant they gave the order for pressing.

THE COURT: In other words, you told me it was six or seven days after February 7th?

THE WITNESS: I believe that would be the timetable, your Honor.

MR. SCHURTMAN: Your Honor, I offer Plaintiffs' Exhibit 34, which is one of the records.

THE COURT: Any objection?

MR. PRETTYMAN: No objection.

MR. BERGEN: No objection.

THE COURT: Received.

(Plaintiffs' Exhibit 34 was received in evidence.)

THE COURT: Could I see 34? Go ahead.

BY MR. SCHURTMAN:

Q Mr. Levy, you testified previously that at the

meeting on January 29th with Mr. Seider --

MR. PRETTYMAN: 30.

Q -- on January 30th with Mr. Seider ?

THE COURT: You said 30.

MR. SCHURTMAN: Are you uncertain about the date?

THE WITNESS: I repeated 30 because somebody said 30. I could not swear whether it was the 29th or the 30th.

Q What is your recollection?

A 30th is what has been popping around.

THE COURT: It is not what is popping around. You are the witness. You remember or you don't remember.

THE WITNESS: I know it is the end of January, your Honor.

THE COURT: You are not sure of the date?

THE WITNESS: No, except what I have heard here. I would not have come in and said on the stand it was the 30th.

Q Do you remember what day of the week it was?

A No.

Q In any event, at that meeting with Mr. Seider and getting an injunction?

A I told him --

THE COURT: Just finish your question.

Q After that meeting did you receive any further information that an injunction would be sought against you or against your companies?

A I don't think so. I believe there was one coming.

MR. PRETTYMAN: I move to strike that, your Honor.

THE COURT: Motion denied.

The question is, you never heard of any actual motion for an injunction?

THE WITNESS: No, sir.

Q Now, you testified that ADam VIII went ahead and started televising the commercial?

A Yes.

Q Did you receive any orders? Did Adam VIII receive any orders for the record?

A Yes.

Q Do you happen to know how many?

A I think it was about 1200 were filled.

THE COURT: The question is, how many did you receive.

THE WITNESS: About 1200. Whatever we received we filled.

Q Did there come a point at which the advertisements or the commercials were stopped?

A Yes.

Q When was that?

A Well, what happened was the commercial started on Friday. Monday when we came in we had gotten some responses and then found out that certain stations did not run the commercials, some did run the commercials, and stations starting over the weekend and Monday and Tuesday and WEdnesday of that week were getting telegrams from Capitol Records threatening them, that this was an unauthorized release, and some stations dropped the commercial or did not run the full schedule and ran a couple of commercials and stopped running them and various things happened all over the country.

MR. PRETTYMAN: May I apologize for interrupting, sir? I would like clarification on the record as to the ambit and limitsof this inquiry that we are now into? Do you recall in the discussion before the trial started, I think your Honor said you were going to bifurcate the trial and try the issue of whether or not there was, in fact, an oral contract.

If this is for background purposes only, I have no objection to it. But if it is for the purpose of

proving something else, including damages or anything of that sort, then I think it goes beyond what your Honor said you are trying. May we have just a clarification of what it is we are doing?

MR. SCHURTMAN: I am not going to the questionof damages at this time. I understand that is reserved for later,unless your Honor wants us to cover it now.

I would like to offer the actual telegrams, copies of telegrams that were sent by Capitol to Adam VIII suppliers and television stations for the purpose of showing the manner in which the defendants either did not perform the contract with us or interfered with our contract, because I believe the manner in which it was done has a bearing on whether a contract was made or not.

Now, it will take me anotehr, I would say, maximum of ten minutes to complete this phase of the case and then I am finished with Mr. Levy.

MR. PRETTYMAN: Your Honor, with all due respect it is not a question of how long it is going to take; it is a question, No. 1, of what the issues are. I do not agree that this goes to whether or not there was a contract, and if it is going in to prove we have done various things wrong, we have to marshall our evidence in

response to it.

THE COURT: I would like to hear the whole story from beginning to end. This is part of the factual picture and it seems to me very artificial to suddenly cut off at a certain point when there were other events. Now, what inferences might be drawn or what use may be made of the defense with respect to some legal theory I don't know yet. But it seems to me I would like to hear the story.

Now, as far as I am concerned, I just maybe at the beginning of the trial when we were first talking I did not have any particular picture. But you have all talked about the question of interference in your opening statements, and I think it is artificial, as far as I am concerned. I would just as soon hear the facts about the damages and have the whole picture before me, because, you know, it all fits together in some way. But if there is a lot of minutiae about damages, you can defer that. But I certainly would like to hear about the events which occurred from beginning to end, so I get a whole picture.

MR.PRETTYMAN: May I just for the record say, if I understand what you have just said correctly, I not only don't object, but I welcome it, because I think what he is about to put in will give you some inferences in

regard to whether or not there was an oral contract. But I just want to make sure it is being put in for that limited purpose, because if it is being put in for other purposes, I would object.

THE COURT: I don't know what this business is about facts being put in for one purpose. It seems to me when the facts are in then they are useful for whatever legal theories counsel and the Court use them for. Facts are facts when they are in. Let's not get into that. If you at a later point are worried about whether you should put in a particular line of proof, you raise that. But I will receive these as facts. Let us go. It is late in the day.

MR. SCHURTMAN: I offer Plaintiffs' Exhibit 41-A through 41-P, a series of telegrams sent by Capitol Records, Inc. to the suppliers of Adam VIII and the TV stations that were running the Adam VIII commercials or who had agreed to run them.

THE COURT: Are they marked?

MR.SCHURTMAN: They have tags on them.

THE COURT: Is there any objection to 41-A through 41-P?

MR. BERGEN: Are you also going to introduce the telegrams from Mr. Lennon that were sent?

MR. SCHURTMAN: I will do it my own way.

MR. BERGEN: I just want to know whether you are putting them all in together.

MR. PRETTYMAN: I do have to make my record. I do not object, unless they are going in for the purposes of proving damages, in which case I do.

THE COURT: Overruled.

(Plaintiffs' Exhibits 41-A through 41-P were received in evidence.)

THE COURT: These are all telegrams of Capitol Records?

MR.SCHURTMAN: Right.

In response to Mr. Bergen's inquiry we had planned to put in the other telegrams through another witness at another point. I am told we don't have them available at this time.

THE COURT: Maybe they will be consented to.

MR. SCHURTMAN: I don't have them here.

THE COURT: What else do you have this afternoon?

BY MR.SCHURTMAN:

Q Mr. Levy, did there come a point where the television stations notified Adam VIII that they would suspend the Adam VIII commercials?

A Certain television stations immediately suspended the commercials and we had to talk to them or indemnify or assurethem and some of them put them back on, and then some others dropped it. We had all different situations with all different stations. It was not just one pattern. It was not just one pattern.

MR. SCHURTMAN: Your Honor, we will furnish the details of what happened with each TV station at a later point in the case.

I am just asking the witness to give a general outline on that.

Q Did the printer of the album covers advise you whether it would continue to print the covers?

A Lew Garlick got very nervous --

THE COURT: Wait a minute. Garlick was head of the printing firm?

THE WITNESS: Ivy Hill, sir.

THE COURT: What happened? Did he call you or did he come to see you?

THE WITNESS: He called me from Florida, as a matter of fact, because his company received correspondence from Capitol. He called me from Florida, "What is going on?"

I told him, "Don't worry. We got the rights."

He was worried because these type of things can explode into terrible problems and he wanted some identification or he was not going to print, he just could not afford to be involved, and even if we were right, he did not want to be dragged into a lawsuit because it was not worth it to him. He was not happy about the whole situation.

THE COURT: What was the result?

THE WITNESS: His lawyers were going to draw up some indemnification papers to present to us and there was no time because after a few more days we decided to stop, that we could not compete with what was happening to us because when Fulfillment said they could not fulfill we were dead.

Q You said the Fulfillment Center was RCA?

A That is correct.

Q Did there come a point when RCA informed you that they could not go ahead and handle the mail order fulfillment?

A Yes. There came a point they said they had a problem. We tried to indemnify. Capitol got in touch with them and they said they could not do it, they did not need the aggravation, and they would not do it for us.

MR. PRETTYMAN: I object to Capitol getting

in touch with them. I don't know how he could tell that.

THE COURT: Read the answer.

(Answer read.)

THE COURT: Yes, I will strike the reference to Capitol getting in touch with them.

Q I believe you have covered the TV stations?

A Yes, and the Fulfillment Center and the printer.

Q Mr. Levy, did there come a point where Capitol Records put out an album of John Lennon Rock and Roll?

A Yes.

Q I show you Plaintiffs' Exhibit 35 for identification. Is this the album?

A Yes.

Q Do you know approximately when it was released?

A I think within a couple of weeks after hours.

MR. SCHURTMAN: I offer the album in evidence.

MR. PRETTYMAN: No objection.

MR. BERGEN: No objection.

THE COURT: Received.

(Plaintiffs' Exhibit 35 was received in evidence.)

Q Did Exhibit 35 contain the same songs that were contained in the album that Adam VIII put out, Exhibit 34?

A Not exactly the same. I think it is a couple of songs short. I would have to verify it. I think they left out a couple of songs.

Q Do you know which songs were left out?

A Angel Baby and Bye, Bye Baby, I think.

Q Was Angel Baby one of the Big Seven songs?

A Yes, it was one of the Big Seven songs.

Q Now, going back for a moment to the settlement agreement of the original lawsuit, we are going back to the October, 1973 agreement now, in which Mr. Lennon had agreed to record three Big Seven songs, as of the time the Capitol album came out had Mr. Lennon recorded three Big Seven songs?

A No.

Q How many songs had he done?

A He released two, Ya Ya, You Can't Catch Me. Angel Baby was the third song he withdrew from the album before it came out on Capitol. He didn't release it.

THE COURT: I thought you asked whether he had recorded.

THE WITNESS: Recorded? The answer would be

yes; released would be something else.

THE COURT: What is your question?

Q My question is, had he released?

A No, he did not release Angel Baby. He only released two songs.

Q Has he ever up to this date released a third Big Seven song?

A No, sir.

THE COURT: The two he had released were --

THE WITNESS: Ya Ya and You Can't Catch Me,your Honor.

Q At about the time that the telegrams went out to your suppliers and about the time that the Capitol album was released, did any stories appear in the press concerning your album?

A Yes.

Q Did you read any of these stories?

A Yes.

Q I show you Plaintiffs' Exhibit 60 for identification. Can you tell the Court whether you read that at the time?

MR. PRETTYMAN: This is 60?

MR. GRUMBACH: This is not on the list you gave us.

MR. SCHURTMAN: We originally had intended to use it on cross examination, but in order to complete the story at this point I am offering it now.

THE COURT: You are offering 60?

MR. SCHURTMAN: Yes, I am offering it not for the truth of its contents, but for what Mr. Levy read at that point.

THE COURT: What is the relevance of that?

MR. SCHURTMAN: I am going to connect it up to the press releases that were put out by Capitol stating that the Adam VIII album was unauthorized, and this release was picked up by the newspapers and the trade press and a great deal of publicity was given to the fact that Capitol contended that the Roots album was not genuine and was unauthorized.

THE COURT: Is there objection to Plaintiffs' Exhibit 60?

MR. PRETTYMAN: I don't see the relevance. I have no question as to its authenticity. I don't see what it proves.

THE COURT: Do you object or don't you object?

MR. PRETTYMAN: It is a two-paragraph article in Billboard. I don't understand what the significance

of it is.

THE COURT: I have not read it. I have not the faintest idea.

Does anybody object or not?

MR. PRETTYMAN: I object on the grounds of relevance.

MR. BERGEN: So do I.

MR. GRUMBACH, I, too.

THE COURT: I have read Exhibit 60. What does it relate to?

MR. SCHURTMAN: Let me withdraw that offer for a moment, your Honor, and let me offer a Capitol release which I don't think they can object to, Plaintiffs' Exhibit 49.

Do you want copies?

THE COURT: Will there be objection to 49?

MR. PRETTYMAN: It is authentic and it was released, and the only objection I have would be the same one I had before in terms of what it is intended to prove.

THE COURT: Does this relate to slander?

THE WITNESS: Harassment.

MR. PRETTYMAN: He has withdrawn that from the case.

MR. SCHURTMAN: Slander, no.

THE COURT: Harm to business repuation?

MR. SCHURTMAN: That I have withdrawn. But I have not withdrawn the interference with our album.

Our position, your Honor, very simply, and I will go over it for this purpose, is that Capitol Records --

THE COURT: Let us cut it short. I will receive it if it relates to something in the case, and I will receive press release items based on 49.

MR. SCHURTMAN: In this case I will offer Plaintiffs' Exhibit 69 for identification, which is another press item.

MR. GRUMBACH: We have not 69 on our list, either.

(Plaintiffs' Exhibit 49 was received in evidence.)

MR. GRUMBACH: Your Honor, we haven't got 69 on our list, either.

MR. SCHURTMAN: I know. It is all part of the same thing.

THE COURT: You get those lined up and have them and get the reporter to put them on the record. Get the thing in order.

Do you have any more questions of Mr. Levy? We don't have to spend time tonight putting that stuff on the record.

MR. SHURTMAN: All right.

Q Mr. Levy, based on your experiences in the record industry and in particular your experiences with Adam VIII, can you give the Court your best estimate of how many albums you would have sold by mail order in the United States but for the fact that your suppliers and your TV stations refused to continue to handle your product?

MR. PRETTYMAN: I object, your Honor. There is no basis laid for that.

MR. BERGEN: Objection, also, your Honor.

MR. SCHURTMAN: Your Honor, may I explain that we will offer detailed figures through an account.

This is merely Mr. Levy's general estimate based on his experience. The details will then be offered through

an account in great detail, I might add.

MR. PRETTYMAN: He has not shown that he has ever sold an album of this quality, of this size through this method, he has not shown that he has experience in trying to sell an album with this kind of star or in this kind of method.

He has shown no basis for making an estimate. It would be nothing more than a sheer guess on the record as it stands now.

THE COURT: That is for him to testify and you can cross examine.

If it is a sheer guess, that does not mean anything. If it is an estimate that has some basis, he is entitled to make it if it is relevant.

MR. SCHURTMAN: Let me lay a foundation.

THE COURT: You got to lay a foundation, and I know it is late and you are trying to hurry it along.

Is this the last line of questioning?

MR. SCHURTMAN: That is the last, your Honor.

THE COURT: Lay some basis if you can.

Q What are some of the biggest selling TV packages that you have ever been involved in?

A The Polka album we made for K-Tel sold about a million, six hundred thousand.

I was involved with American Grafiti, which is about over a million point five. This is States I'm talking about.

The rock and roll package --

THE COURT: Who is rock and roll package?

THE WITNESS: It was an assortment of various artists. It went over a million and a half.

I made a half a dozen packages for CBS that went between 700,000 and a million.

Q Can you name them?

A Dynamite.

We used to make up names as we go along.

No, I can look it up, though, and give you the names, Mr. Schurtman.

Q Had you ever handled a package, Mr. Levy, either through Adam VIII or for another company which involved a start of Mr. Lennon's magnitude?

A No.

Q Had you ever handled a package where the star was performing the songs and recording them for purposes of the package itself?

A No.

Q Was this a first as far as you were concerned?

A This would be a very big first.

Q In your opinion, Mr. Levy, and based on your experience in the industry, would the fact that Mr. Lennon had performed and recorded these songs for the package increase or decrease the potential sales?

A I think it would increase.

Q On what do you base that thought?

A Well, actually, John Lennon would be the first real super star that would have his own package and with a creative idea and the whole thing was custom made for television.

Q Why would that increase sales?

A Well, it would increase sales because I think properly promoted in the homes and through the television, I think a lot of people would have bought it.

My personal opinion, and I made a lot of packages, would be it would probably be one of the best packages ever made.

Q Had you and Mr. Lennon discussed at the October 8, 1974 Cavallero meeting any estimate of how many albums would be sold over television?

A Yes.

Q And what did you say and what did he say on that point?

A I thought it would do a couple of million in the

United States.

Q You said that.

A Yes.

Q And what did he say?

A He didn't disagree.

Q Based on your experience, then, would you -- let me withdraw that question.

Based on your experience, what is your estimate of how many albums Adam VIII would have sold in the United States if it had continued to sell them by means of TV advertising?

MR. PRETTYMAN: I object, your Honor.

MR. BERGEN: Objection.

THE COURT: Overruled.

A I think we could have done a couple of million. I'll stand by that, Mr. Schurtman.

Q And can you break that down as between mail order and retail fulfillment centers?

A Yes and no. That would be strickly a guess, because --

THE COURT: Okay. We don't need that.

Anything else?

MR. SCHURTMAN: Yes.

Q What is your estimate of how many albums would

have been sold abroad if you had produced with this package?

A My experience would tell me that abroad usually equals the amount sold in the United States. The rest of the world usually, in sales, equals what is sold in the United States.

MR. GRUMBACH: Your Honor, I would make the same objection. I don't think there is any foundation laid as to his experience abroad.

THE COURT: Overruled.

Q Have you had any experience abroad?

A Yes.

Q What has your experience abroad been?

A Well, I made a few packages for Ronco in England. I got a quarter of a million dollar advance for making that package.

I have allowed masters to be used by K-Tel in Germany and the average sales in Germany it looks to me about three to four hundred thousand albums on any package that is put out. The same thing applies to England.

Japan is even a bigger market, but they are just starting there.

Australia I have made packages four. It is usually a hundred thousand is big in Australia.

I have a dozen packages in Canada that I have

run from a hundred to three hundred thousand.

France we can't run them because there is no commercial television.

New Zealand is part of Australia.

Q All right.

THE COURT: All right.

MR. PRETTYMAN: Your Honor, may I just inquire whether we are talking about tapes, too? He keeps saying albums, so the record is clear.

THE WITNESS: It is the album and tapes jointly.

When I make that statement is is album and tapes, jointly. Yes.

Q That is in connection with all your prior answers?

A Yes, sir.

In other words, two million assortment of albums and tapes. Tapes on some packages run sometimes to 35 percent.

THE COURT: Anything else?

MR. SCHURTMAN: Yes. Two more questions.

Q Do you have any information as to how many albums Capitol sold of its John Lennon album?

THE COURT: I am sure they will produce that.

Is that agreed on?

THE WITNESS: I have had the information anyway.

gte 8 Levy - direct

THE COURT: All right.

MR. SCHURTMAN: I have been informed -- this is just one last question, your Honor -- that Capitol sold approximately between 350 and 400,000 albums in the United States.

MR. PRETTYMAN: I object to this. I don't know who is testifying here.

MR. SCHURTMAN: It is a foundation. These are figures that you gave me, one of you gentlemen.

I will put it hypothetically if you wish.

THE COURT: I would assume that all of the lawyers know how many albums Capitol sold and you can readily tell me.

How many did they sell?

Who is Capitol's counsel? Mr. Prettyman.

MR. PRETTYMAN: Yes.

We have a list of figures, your Honor, and it reached last May a height of I think around 420 or 30,000, it has been going down every since, and I believe the last figure -- I'd have to look, but it is in the area of 360.

THE COURT: You say going down.

MR. PRETTYMAN: What happens is the albums go out and then returns begin coming back and the returns can come back faster than your sending the album out of a

certain time.

THE COURT: So it is a net?

MR. PRETTYMAN: The net as of the last figure which we had, I think December 11, I would simply have to look.

It is in the area of 340 to 360,000. That is us alone.

MR. SCHURTMAN: How about abroad?

MR. PRETTYMAN: I have the figures for the rest of the world, but I have not added them up. They are just in a list country by country.

THE COURT: You can get that list.

Can you finish your questioning?

Q My question, Mr. Levy, is this.

Assuming hypothetically for purposes of my question to you, if Capitol sold 350,000 albums in the United States and another four or five hundred thousand abroad, do you have any explanation or any reasons why in your opinion the Adam VIII sales would have been higher?

MR. BERGEN: That is really speculative, your Honor.

I object.

MR. SCHURTMAN: There is a definite reason.

THE COURT: Overruled.

A Our television campaigns.

Q Can you explain that further?

A Well, I can even give you an example with Capitol involved.

Capitol released an old album of the Beach Boys and for one of the first time did a television campaign, and sales put the album in right to the top tens in the United States.

Television sells albums. The masters that we usually use are old masters, they are packaged. You put it before the public, you sell it with a good commercial and you sell albums. It works. There is no question about it.

THE COURT: Okay. In your opinion you sell more on TV than they sell through normal commercial channels, is that basically it?

THE WITNESS: The same album would sell more on TV with spending dollars selling it.

Q To your information, was the Capitol album of the John Lennon record sold through normal commercial channels?

A Yes, and they reduced the price when they put it out.

I think they came out at $5.98 even though the rest of the Beatles stuff is $6.98.

MR. PRETTYMAN: I object to that, your Honor.

THE COURT: Have you finished Mr. Levy's examination?

MR. SCHURTMAN: Yes, except on the subject of detailed damages, where we may want to call Mr. Levy for a few points, I am finished with Mr. Levy.

THE COURT: All right.

What is your plan tomorrow?

MR. SCHURTMAN: Your HOnor, we have one witness who will be quite short and who I understand has to leave the country tomorrow afternoon.

THE COURT: Okay.

MR. SCHURTMAN: If possible, I would like to put him on out of turn in the morning.

I understand Mr. Prettyman would like to put Mr. Brown on.

THE COURT: Right.

MR. PRETTYMAN: We will put him on right after lunch if that is acceptable.

THE COURT: Think of what I said.

If you can, minimize cross examination and get as quickly as possible through the direct examination of the main witnesses on both sides. The case will be laid out faster and clearer for me, I guarantee you, than if we

have endless cross examination.

That is a lot.

(Adjourned to 10 o'clock, January 16, 1976.)

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BIG SEVEN MUSIC CORPORATION

vs. 75 Civ. 1116

JOHN LENNON, et al.

January 16, 1976
10:30 a.m.

(Trial resumed.)

THE COURT: Good morning.

What witnesses do we have today?

MR. SCHURTMAN: Your Honor, we request permission to call a witness out of turn because he has to leave the country.

I call Mr. Gerald Masucci.

MR. PRETTYMAN: Your Honor, before we do this, one very brief preliminary matter.

Without trying to make all the corrections in the record, counsel for both plaintiffs and defendants have agreed to do corrections in the transcript so that cross examination can proceed properly.

At page 194, line --

THE COURT: Wait a minute, let me look at the transcript.

MR. PRETTYMAN: Page 194, line 17, where it reads "They paid me as much as a thousald dollars", we are agreed that he said "They paid me as much as a hundred

thousand dollars."

The word "hundred" should be inserted between "a" and "a thousand", is that agreeable?

MR. BERGEN: So stipulated.

MR. PRETTYMAN: Then on page 289, line 14, which begins "concerned he was sad that", the two words "was sad" and the word "said" should be substituted.

Again, I emphasize these are not obviously all errors that might appear in the transcripts.

THE COURT: That is fine. Anything else?

MR. PRETTYMAN: Is that acceptable?

MR. BERGEN: I agree.

xx G E R L D M A S U C C I, called as a witness by defendants, having been first duly sworn by the Clerk of the Court, testified as follows:

x DIRECT EXAMINATION

BY MR. BERGEN:

Q Mr. Masucci, where do you reside?

A 142 East 16th Street, New York.

Q What is your occupation?

A I am president of Fania Records.

THE COURT: Mr. Masucci, the acoustics in this room are bad, and we have got the window open and a little outside noise. Everybody should hear you if they possibly

can, so take your time and speak louder than you normally would.

Q Mr. Masucci, what does Fania Records do?

A We make Latin records.

Q How long have you been connected with Fania Records?

A For 12 years, since it started.

Q Do you recall an occasion in 1974, when you -- let me withdraw that.

Do you know Mr. Morris Levy?

A Yes, I do.

Q How long have you known Mr. Levy?

A About nine or ten years.

Q And have you had business dealings with Mr. Levy?

A Yes, I have.

Q What has been the nature of these business dealings?

A I have produced records for him. He has given me artists to use on my label and I have given him artists to use on his label.

A few years ago he used to distribute my records. I purchased a record company from him.

Q Does Mr. Levy own any stock in your company?

A No, he does not.

Q Do you own any stock in any of Mr. Levy's companies?

A No, I do not.

Q By that I include Big Seven Music, Adam VIII, Ltd., Roulette Records or any other one of Mr. Levy's companies?

A None at all.

Q In 1974, did you have occasion to visit Mr. Levy's farm?

A Yes, I did.

Q Where is that farm located?

A It is in Ghent, New York.

Q What time of the year was that?

A It was in October.

Q Can you tell the Court how that visit came about?

A I was speaking to Morris on the phone about -- I don't remember -- some kind of business in general, and he told me that John Lennon was going to make a TV package album for him and they were rehearsing up at his farm.

And I said, "Wow, I would sure like to meet John Lennon," could I come up, and he said sure. And that's what happened.

Q Did you go up to the farm?

A Yes, I went up to the farm.

Q Were you accompanied by anyone?

A Yes, I was with my wife.

Q And do you recall on what day of the week you arrived at the farm?

A Yes, I arrived on Saturday morning, early Saturday morning.

Q To the best of your recollection, who was up at the farm that day?

A Myself, my wife, Mr. Levy, John Lennon, a girl named May Pang.

There were about four, five musicians with Mr. Lennon and Mr. Cahl, which is Morris' business associate, and his wife.

Plus there was some help, the girl who cooks.

Q Do you know whether the musicians were accompanied by anyone?

A Yes, the musicians, I know at least one of the musicians had a girl with him. I don't know if it was two girls or one girl. I'm not sure.

Q What was going on at the farm?

A They were rehearsing some music, old songs.

Q Where were they rehearsing these songs?

A In one of the wings of the house. There is a

big fireplace, it is a big room. It's like the second living room, I would call it.

Q Who was doing the rehearsing?

A Mr. Lennon and his musicians.

Q Did they have any instruments?

A Yes, they did.

Q Was there a piano?

A It was an electric piano, I think. I'm not sure. It wasn't a big piano. I don't know if it was an electric piano or a small regular piano.

Q Did you listen to some of the rehearsals?

A Yes.

Q How long did the rehearsals go on while you were there?

A Two or three hours.

Q What kind of music were they rehearsing?

A Old rock and roll standards.

Q How long did you and your wife stay up at the farm that weekend?

A We just staved that entire Saturday, and we slep over and Sunday afternoon we all left together.

Q Did the rehearsals go on both days?

A I don't think they went on Sunday morning. I don't think so. But, they rehearsed, I think,

twice Saturday while I was there.

Q Did you have any meals while you were up at the farm?

A Yes.

Q And where were these meals taken?

A In the dining room.

Q Did everyone eat together?

A Not all the musicians ate together, I don't think we could all fit at the table. I don't remember that, if everyone ate at exactly the same time.

Q Was there any discussion at which Mr. Lennon was present or participated relating to the nature of what was being done at the farm?

A Yes.

Q Will you relate to the Court what was said and by whom?

A Well, they discussed the songs in the album.

MR. GRUMBACH: Objection, your Honor.

MR. PRETTYMAN: "They discussed the songs". We don't know who is saying what.

THE COURT: We have to ask you to be careful, and try to remember who said what. It may make a difference.

Now, if you can't remember, and it is all kind of merged, tell us that. You take your time and try your best to say somebody asked something and somebody said something. Whatever you remember happened.

A Well, I remember being at the table with Mr. Levy and Mr. Lennon. And, whether Mr. Levy or Mr. Lennon said, or both said, discussed the songs that would be in the album, and what a great idea it was, and how, you know, incredible it would be.

I remember specifically them saying that the album would be so good that even the disc jockeys would have to pay for it.

THE COURT: Who said that?

THE WITNESS: I can't exactly say whether it was Mr. Lennon or Mr. Levy. It was going on back and forth.

Q Did Mr. Lennon state, in words or substance for whom he was redording the album in question?

A Yes, he did.

Q What did he say?

A He said the album was going to be for

Mr. Levy.

Q Was there any discussion about price?

A Yes, there was.

Q What was said and by whom?

A I think Mr. Levy said it was going to be a 4.98 album.

Q Was that said in Mr. Lennon's presence?

A Yes, it was.

Q Did Mr. Lennon say anything to the effect of whether he had or had not recorded a similar album in the past?

MR. BERGEN: Your Honor, I think he is leading the witness just slightly.

THE COURT: Maybe just slightly, is okay. You are not objecting?

MR. BERGEN: I will strike the word "slightly". He is leading.

THE COURT: Let me hear the question.

(Question read.)

THE COURT: I don't know any other way to ask that.

What we are trying to get, obviously, when an attorney objects to leading, we don't want it to be Mr. Schurtman's words or ideas. All Mr. Schurtman is doing

is asking you questions about subjects. Naturally we want your memory only and your words, and we want your description and your testimony and not obviously to have adopt in any way any possible suggestion by Mr. Schurtman and I am not saying he is trying to make one. But, any way, you listen carefully, hear what he asks you and we want your memory entirely. Let's have the question again.

Q Was anything said by Mr. Lennon on the subject of whether or not he had made a similar type of album in the past?

A That was mentioned. Whether it was mentioned by Mr. Lennon or Mr. Levy at the table, I can't recall that.

Q What was said?

A What was said? That this type of album -- this type of material was never recorded by Mr. Lennon before and it was going to be, yoiu know, like a spectacular.

Q If this was not said by Mr. Lennon himself, and you say you don't recall, and if Mr. Levy said it, was it done when Mr. Levy and Mr. Lennon were together?

A Yes.

Q To turn to another subject:

In your business dealings with Mr. Levy have

you ever made any oral agreements with him?

A Yes, I have.

Q Can you describe to the Court the nature of these oral agreements?

A Well, Mr. Levy had one of the top Latin labels and I had another Labin label. And, he has given me three artists to appear on my label in exchange for me giving him three artists to appear on his label.

Q And this was done orally?

A Yes, it was.

Q Was this a simultaneous exchange?

A No, it wasn't.

Q How did it work?

A In other words, I don't remember if he got the artist the first time. We made it an all star album between his company, Tico, Fania, and I had either three artists of his or he used three artists of mine and the understanding was next year, or the next album that would be recorded, he would give me three to use on my album.

Q Did you ever reduce that to writing?

A No.

Q Were the terms of the oral agreement carried out by both sides?

A Yes, they were.

Q Based on your experience of the record industry, is it customary to make oral deals of this nature in your industry?

A It depends who you are dealing with.

Q If you are dealing with someone you trust, do you make oral deals?

A Yes, I do.

Q Do you trust Mr. Levy in connection with oral deals?

A Yes, I do.

MR. SCHURTMAN: I have no further questions.

THE COURT: You may cross examine.

CROSS EXAMINATION

BY MR. PRETTYMAN:

Q Mr. Masucci, I am Barry Prettyman and I represent Capitol Records and EMI Records. We are defendants in this lawsuit.

Following the meeting or rehearsal at Ghent, did you thereafter meet with Mr. Levy at his office in regard to this lawsuit and the events that had occurred at Ghent?

A I met with him many times in his office.

Q Did you meet with him at his office when he asked you what you recall about the events at Ghent?

A Yes, and on the telephone too. I am not sure

if it was on the phone or at his office.

Q You don't recall?

A If it was on the phone or at his office. I mean, both places probably.

Q Did you meet at his office in regard to these events you have just testified to?

A Specifically for these events, no.

Q He didn't call you in for the purpose of asking you what you remembered about them?

A No, because I see him, you know, once or twice a month.

Q Was anyone else present in the office at the time you discussed what you recall about the events at Ghent, besides you and Mr. Levy?

A There was no set specific meeting to discuss this particular thing.

Q Let us assume then that you were just meeting in his office about other matters. Do you recall a discussion where he asked you what you remembered about the events at Ghent and did he mention that a lawsuit had been filed?

A Yes, he did.

Q You recall that?

A Yes.

Q Do you remember about when that occurred?

A Maybe, I don't know, six months after. I don't remember exactly when after the meeting at the farm we discussed this.

Q In any event, you were at a meeting when this occurred. Was there anyone else present?

A Mr. Levy's office, people come in and out constantly. Whether there was someone there talking about this case with me, no.

THE COURT:When you say "no," there wasn't any or you don't remember?

THE WITNESS: I would say no, there wasn't any. That's my best recollection.

Q In any event, is it not true that you attempted to explain to Mr. Levy on that occasion everything that you had recalled about what happened at Ghent as it might possibly relate to this lawsuit?

A As I said before, I never went to see Mr. Levy specificaily to discuss this case, so I cannot say this day I remember exactly what we discussed, because we talked on thephone about it, I was over there, we discussed other things, this came up, I left.

It wasn't a meeting to discuss this particular thing, so it is very hard for me to say exactly what happened because many things were happening and this was just a by-product.

Q In his office, regardless of why you were meeting there, did not Mr. Levy ask you to recall as best you could the events that had occurred at Ghent as it related to this lawsuit?

A I answered that question before.

Q All right. Did you not then attempt to relate to him the events that related to this lawsuit as best you

remembered them?

A Right.

Q Did you tell him in relating those events what you have testified to here today?

A Yes.

Q So, in other words, you told him that Mr. Lennon said the album was going to be for Mr. Levy in essentially those words?

A Yes.

Q You told him about Mr. Levy saying the price was going to be $4.98 an album?

A Yes.

Q Mr. Masucci, I refer you to Mr. Levy's deposition, which was taken in this case on June 5, 1975. Beginning at page 704 Mr. Levy began testifying about the fact that he had discussed this case with you in his office and had asked you about the events as you best remembered them.

On page 705, sir, I read you beginning line 25:

This is a question to Mr. Levy:

"Q Can you tell us what you and Mr. Masucci said to each other in this conversation about his being a witness in the case?

"A I asked Mr. Masucci if he remembered the weekend. He was thrilled to be up there. He testified that, yes, he remembers some of the conversations at the table. It was a great album and he even got into a discussion with John about what an unbelievable package this is going to be and it is going to shake up the whole music industry and he volunteered that he had taken pictures of John up there and he more or less told me what he knew about and what he overheard up there.

"Q What did Mr. Masucci say that he and Mr. Lennon asked you?

"A They discussed the album.

"Q What did Mr. Mascucci say that Mr. Lennon had said?

"A Gee, I don't remember exactly, but it was just -- my observations of it now in recollection is that he congratulated him on the album and told him how great it was going to be and market it that way and John answered him back positively, that he thought so, too, and he was really excited to be doing it."

The conversation then goes on:

"Q You say Mr Masucci took some pictures of John up there. Has he given you copies of those pictures?

"A Not yet. I haven't requested them yet, but

I intend to.

"Q Have you told us everything that you can remember about the conversation with Mr. Masucci; had you discussed his being a witness prior to this time with him?

"A Prior to today?

"Q No, prior to the time that you had this conversation with him?

"A Oh, no."

Going over to page 708. I would be happy to read what is in between, Mr. Schurtman, but it doesn't relate to this, but if you want me to, I will.

MR.SCHURTMAN: Read anything you want, Mr. Bergen.

Q Going over to 708, line 21:

"Q Did Mr. Masucci say that whoever the person that was with him also recalled some conversations about the Roots album that weekend?

"A No. It would be more apt for Jerry in the record business to get into conversations about records and everything else than whoever was accompanying him."

And that is the end of the conversation about his conversation with you.

Does that refresh your recollection as

to whether you told Mr. Levy, whether you were in his office, about Mr. Lennon saying that the album was going to be for Mr. Levy and the discussion about $4.98 per album?

MR. SCHURTMAN: I am sorry, I don't understand what he means does it refresh his recollection.

THE COURT: Did he say he didn't remember?

MR. BERGEN: What I am saying is that Mr. Levy --

THE COURT: Did he say he didn't remember?

Q Does that refresh your recollection --

THE COURT: No, I asked you a question, Mr. Prettyman. Did he say he didn't remember and I am speaking of Mr. Masucci's testimony on the stand here.

MR. PRETTYMAN: What he said was, your Honor, that he told Mr. Levy in his meeting in his office with him everything that he has testified to on the stand today. Mr. Levy's testimony indicates --

THE COURT: You aren't getting my point. There is no need to refresh his recollection. He hasn't said he didn't remember.

I don't mean to be technical or quibble with you, but, you know, this is a confusing thing to the witness, it seems to me, because he hasn't said he didn't remember.

Now, if you want to use it in some other way,

but if there is an objection to that question, I will sustain it.

Q All right, do you recall, Mr. Masucci, during the conversation in Mr. Levy's office telling him about the matters that you have testified to today?

A Yes.

Q Would it be your testimony, therefore, that Mr. Levy is incorrect in the sense that he did not repeat the testimony that you have given here today in terms of what you told him on that occasion?

A Would you repeat that, please.

THE COURT: This is what I mean about cross examination. Really, I get your point. You have read some things. Mr. Levy was repeating, according to his deposition, his memory ofwhat Mr. Masucci told him that Mr. Lennon told him, but Mr. Levy didn't say it was absolutely everything recited verbatim.

It is just such an involved thing. I don't think it is of any weight at all. I ask you to go on to something else.

Q You have testified, Mr. Masucci, that you have entered into oral agreements with Mr. Levy in the past, is that correct?

A Yes.

Q Would you enter into an oral agreement with Mr. Levy in regard to an album that had potential sales of some 4 million copies, that involved a potential gross of some 20 to 25 million dollars, that involved one of the largest stars in the record industry, that involved such matters as royalties and the other things which normally go into a contract of that kind stretching over a period of time, would you enter into that on an oral basis and without any written agreement whatsoever?

A With Mr. Levy, I would, yes.

Q Mr. Masucci, would you now tell us, sir, you had a discussion this morning, I believe, with plaintiffs' counsel here?

A Yes, I did.

Q And you have had prior discussions with them?

A No.

Q This is the first discussion that you have had?

A With this particular lawyer, yes.

Q Does that mean you had discussions with other plaintiff lawyers?

A Yes, the one on the right.

MR. SCHURTMAN: Can we identify which lawyer you meant first, Mr. Prettyman, so the record is clear?

Q Why doesn't Mr. Masucci tell us?

A I spoke to you.

THE COURT: Meaning Mr. Schurtman.

A I am not good on names. Mr. Schurtman. And I spoke to him one time before.

MR. SCHURTMAN: Mr. Kanzer.

THE WITNESS: Yes.

Q Was Mr. Levy with you during a part of those discussions?

A With Mr. Schurtman he was and with Mr. Kanzer he wasn't.

Q Would you tell us what Mr. Levy told you this morning in regard to this lawsuit?

A What he told me?

Q Yes.

A He told me, what do you remember?

We went over the things I remembered.

We discussed another case he was having.

We discussed an apartment --

Q I am talking about things in relation to this lawsuit.

A We just discussed the things that I just testified to.

We also discussed that John Lennon got a

haircut.

Q Did you discuss anything in relation to your testimony?

A Yes, everything that we just went over.

Q In other words, uou went over with Mr. Levy what you were going to say today?

A The lawyer asked me questions and I answered the questions.

Q Did you get into any topics that you have not discussed this morning in relation to this lawsuit, of course?

A I don't think so, no. I think we have covered everything.

Q Pardon me?

A I think we have covered everything we discussed.

Q What is the largest deal in monetary terms that you have ever entered into orally?

A Orally?

Q Without any written agreement of any kind?

A That never was put to writing ever?

Q Yes.

A A few thousand dollars.

Q Was your deposition taken in this case?

A No.

THE COURT: Next.

CROSS EXAMINATION

BY MR. BERGEN:

Q Mr. Masucci, are you an attorney?

A Yes.

Q How long have you been a member of the bar?

A Since 1965. I am not sure.

Q Speak up just a little bit, please.

A I am not sure. About 1974 or '65.

Q Where did you go to law school?

A New York Law School.

Q You said before that you would enter into an oral agreement with Mr. Levy. Is that based on your long-standing relationship with Mr. Levy?

A Yes.

Q Would you enter into an oral deal similar to the one that Mr. Prettyman just talked about with anyone else?

A Probably not.

Q How about John Lennon?

A No, I wouldn't.

MR. BERGEN: Thank you.

THE COURT: Mr. Grumbach, do you have anything?

MR. BERGEN: No, I have some more, your Honor. I am sorry.

THE COURT: All right. I thought you wer thanking him because you were finished.

MR. BERGEN: I was thanking him for the answer.

THE COURT: You don't need to do that.

Q How many times have you done that?

A I have done that about six or seven t imes.

Q Do you know where the Club Cavallero is?

A Yes, I do.

Q How many times have you been there?

A 20, 30 times.

Q Are you a member of this Club Cavallero?

A You have to be a member to get in.

Q Do you know how many times you have been there with Mr. Levy?

A With Mr. Levy? You mean go to the place with him?

Q Entering with him or meeting him there and spending the evening with him?

A Yes, I would say half of those times. Maybe more. Whenever he is there, I will go over and say "Hello".

Q When you purchased a record company from Mr. Levy, what was the name of the record company?

A Tico Allegro.

Q Did you purchase the entire record company

from him?

A Yes.

Q Was that pursuant to a written agreement?

A Yes.

Q Were both sides represented by attorneys?

A Let me think. I am not sure if the papers were drawn by his attorney and I read them. I don't remember.

Q Were they drafts of the agreement?

A Yes.

Q You said also that Mr. Levy used to distribute your records, you mean the records of Fania Records?

A Yes.

Q Was that pursuant to a written agreement?

A No.

Q What time did you leave the farm on Sunday afternoon, do you recall?

A I think it was right after lunch. I am not sure what time it was.

Q Did everybody leave at once?

A Some of the musicians, I think, went earlier. Mr. Lennon went with Mr. Levy in his car and we all took off.

In fact, I think we followed each other down the highway.

Q You said before also that there were no rehearsals on Sunday morning.

A Not that I knew of. I mean I didn't get up early, so I don't know. I stayed up that night at the rehearsal. Whether I got up I don't know if there was a rehearsal or not.

Q Do you recall whether you heard music being played during the morning?

A I didn't hear it.

Q There wasn't any rehearsal in the afternoon because you all left.

A Right.

Q And on Saturday there was a total of two to three hours of rehearsals, you say?

A No. I believe there were two rehearsals, one

in the afternoon and one after dinner, late at night. The one after dinner lasted two or three hours.

Q I thought you said earlier that the rehearsals lasted two or three hours. Was that just the evening one.

A Each one. The one in the afternoon might have lasted two hours, I am not sure, because I went out to walk around and this and that. But the one at night I stayed the whole time.

Q Now, you testified that somebody said, and you weren't sure who said it, that the album was going to be so good that disc jockeys would have to pay for it. Have you ever in your experience heard of disc jockeys paying for a record?

A No.

Q That isn't the practice in the recording industry, is it?

A No.

Q Do you recall whether Mr. Lennon, instead of saying the album was going to the Morris Levy's, that he was going to record some of Morris Levy's songs?

A No -- that was said, too.

Q That was said, too?

A Yes.

Q Was there any talk about which Morris Levy songs

he was going to record?

A Yes. I don't remember the names right now, but there was, you know, the tunes were named.

Q But you don't recall the tunes now?

A You know, if someone mentioned the names I probably could remember, but I don't remember which ones were his or which ones weren't his, but they were discussed, that some of Morris Levy's songs would be on that album.

THE COURT: I wonder if I can have the last couple of questions and answers.

(Record read.)

THE COURT: I am sorry, I am going to ask the reporter to read that again.

(Record read.)

THE COURT: It is the first question. I want to make sure that we have the record straight on that.

Mr. Bergen asked you, if I am not characterizing it right, Mr. Bergen, you correct me. I think Mr. Bergen was asking you to recall this: Whether instead of Lennon saying he was going to record the album for Levy, instead of that it was said that Leonnon would be recording some of Levy's songs?

That was your question, right, Mr. Bergen?

MR. BERGEN: Yes, your Honor.

THE COURT: I want to make clear what your answer is.

THE WITNESS: It wasn't "instead of". It was "besides."

THE COURT: All right.

Go ahead, Mr. Bergen.

Q Has Mr. Levy told you what this case is all about?

A Yes.

Q Do you recall whether he told you that?

A Exactly whether, no. Prior to this.

Q Have you ever licensed any master recordings owned by Tiko Records to any other record company? I am sorry, strike that, your Honor.

Have you ever licensed any master recordings owned by Fania Records to the other record companies?

A Yes, I have.

Q Are those licenses in writing?

A Some are and some aren't.

Q The ones that are in writing, is there a set time period for the license. In other words, a period of duration as to how long the license will run?

A In words in writing?

Q Yes.

A Yes.

Q Even the ones orally?

A It is usually three to five years, you know, it depends.

Q Is another one of the provisions in oral -- in these written licenses what the royalties are that are to be paid to the licensor?

A Yes.

Q Is there also a provision as to whether those royalties will be paid, in other words, is it semi-annually or quarterly?

A Yes.

Q Is there also a provision in those written license agreements as to what happens at the end of the license?

Is there a reverse of the masters back to the licensor?

A Yes.

Q Is there also in those written licenses a provision covering the territory of the lisense?

A Yes.

Q Is there also a provision in those written licenses as to who is to pay the royalty to the artist?

A Yes.

Q The artist on the master recording?

A Yes.

Q Isn't it standard in these licensing contracts, these written licensing contracts, that the licensee is reponsible for paying the copyright owners?

A Yes.

Q Is it also a standard provision of written agreements for licensing masters that there is some kind of an advance paid to the licensor for the license?

A Sometimes, yes, and sometimes, no, depending how strong you are.

Q You mean "strong" in terms of the stature of the artist?

A Or the label.

Q Or the label.

Are there also usually in these written license agreements sell of rights at the end of this contract? In other words, whatever is left over at the end of the license.

A Yes.

Q Is it also standard in these written agreements that there is an auditing provision allowing the licensor to come in to audit the records of the licensee?

A Yes.

Q And also an accounting provision?

A Yes.

Q Are these terms also standard in oral agreements, oral license agreements?

A Well, all of those things are standard except for how much, you know, what percentage and what territory, but the rest is all --

Q I mean the general headings of each one of these provisions.

A Yes.

THE COURT: What did you say, everything is standard, except what provision?

THE WITNESS: The specifics.

THE COURT: Except what?

THE WITNESS: What percentage. Like normally it is 12 percent of a hundred.

Like you can make a deal in two minutes, you know, 12 percent of a hundred. What advance, if any. How long and what the terms are -- what the time is.

THE COURT: The other things are standard and understood?

THE WITNESS: Right.

THE COURT: What is it that you need to set in your two minutes? Go over that again.

THE WITNESS: The percentage. I would say the

percentage should be discussed. It is usually 10 or 12 percent.

THE COURT: So you decide whether it is going to be 10 or 12 percent or what other, right?

THE WITNESS: Right. What territories.

THE COURT: And what else, advances?

THE WITNESS: What advances, if any, and where, you know, is it a three or four year deal.

MR. PRETTYMAN: We can't hear, your Honor, I am sorry.

THE WITNESS: Whether it is a three or four year deal.

MR. PRETTYMAN: Thank you.

THE COURT: And all these auditing procedures and selling of the records, they are all more or less assumed.

Q But in the written contracts, they are in there.

A Yes.

Q Now, the sell of provision at the end of the term, is there any particular period of time for this sell of provision?

A It is usually six months to a year.

Q How about the accounting provisions, is there a time period for that?

A It's either quarterly or semi-annually.

Q But how long after -- assume just for the purpose of the question that it is a semi-annual payment of royalties. How long after --

THE COURT: Is there a form that you usually use?

THE WITNESS: Yes.

THE COURT: Why don't you give me a form? You don't have to have somebody remembering.

MR. BERGEN: I was just trying to find out what the standard periods were.

THE COURT: I assume there is a form that everybody uses. Can't you give me one?

MR. BERGEN: There is a standard provision, your Honor, for an accounting of the royalties and auditing. What I am talking about is there is a standard period. Is it like six months or a year. That is all I am talking about.

THE COURT: All right.

Are these things that are in some form?

THE WITNESS: Yes.

THE COURT: Do you have a batch of forms around your place?

THE WITNESS: Yes.

THE COURT: And you use the same forms?

THE WITNESS: 99 percent of the time.

THE COURT: And they have -- what is it that you have to fill in?

THE WITNESS: More or less that. The few spaces for what I have just mentioned.

THE COURT: The percentage?

THE WITNESS: Yes.

THE COURT: The territory?

THE WITNESS: The advances.

THE COURT: And whether it is three or five years, all of those things, right.

THE WITNESS: Yes.

THE COURT: The name of the song, right?

THE WITNESS: Right.

THE COURT: Okay.

Q Mr. Masucci, to go back to the weekend at the farm, did you talk to John Lennon at any other time while you were at the farm?

A Besides --

Q Did you have a face-to-face conversation, just the two of you?

A Yes.

Q Did he say anything about making an album for

Morris Levy during those conversations?

A No, we didn't discuss the album. We were playing pool.

THE COURT: You are talking about at the farm?

MR. BERGEN: Yes, at the farm, your Honor.

THE COURT: I guess I missed this.

Let's have that read back, please.

(Record read.)

Q Did you have any conversations with any of the musicians during the weekend?

A No.

Q Did you hear any of the musicians say that they were up at the farm because John Lennon was making an album for Morris Levy?

A I didn't speak to the musicians.

Q Did you hear any of the musicians say that to anyone else?

A No.

MR. BERGEN: I have no further questions.

THE COURT: Mr. Grumbach.

cx CROSS EXAMINATION

BY MR. GRUMBACH:

Q You were asked, Mr. Masucci, about the advance and its relation to the stature of the artist.

Is it correct that the more prominent the artist, the greater the advance; that would be the relation?

A Yes.

Q You have testified, Mr. Masucci, that you would make certain kinds of oral deals with Mr. Levy. Let me ask you whether you were talking about Mr. Levy individually or with some company that Mr. Levy was connected with?

In other words, these oral deals that you made, did you think that you were making a deal with Mr. Levy as a person or were you relying upon the fact that you had a deal with one of his corporations?

A Well, they were with the corporations, but it is the same thing, really.

Q Is it the same thing to you that you have a deal with an individual? You are an attorney, aren't you, Mr. Masucci?

A Yes.

Q Do you understand the difference, Mr. Masucci between having a deal with an individual in which his personal credit is on the line and having a deal with a company in which you are stuck with whatever assets the company has after it has paid off its creditors?

A Do I understand that?

Q Yes.

A Yes, I do.

Q So you are testifying you would be willing to make oral deals with Mr. Levy's companies as well as Mr. Levy himself?

A If the deal was made with Mr. Levy, yes.

Q You say that you purchased Tiko Records from Mr. Levy, is tha correct?

A Yes, I did.

Q When did you buy the company?

A I think about a year ago.

Q Was that a deal in which you paid cash?

A No.

Q What were the terms of the deal?

THE COURT: This was one that was in writing, wasn't it?

THE WITNESS: Yes.

Q When I say what were the terms of the deal I am simply asking you how much did you agree to pay Mr. Levy and did you agree to pay it on time, in other words, over a period of time?

A Yes.

Q So at the present moment do you owe Mr. Levy money?

A Yes.

Q How much?

A 300,000. He owes me money, too.

Q How much does he owe you?

A I would say maybe a hundred thousand.

THE COURT: I think you better keep your voice up.

Q Let me just ask you one more question.

If you had a deal in which you had a very prominent artist and you were making a deal even with Mr. Levy, under which that artist would record an album for Mr. Levy, would you enter into an agreement that didn't contain a provision that enabled you to come in and audit the books so that you could check to see whether the sales were at the same volume that had been represented to you.

THE COURT: Can you read the question.

(Question read.)

THE COURT: I don't know which side "you" is on.

Q I think you have testified that it is standard procedure in agreements to have a provision that permits you to go in and audit the books of the person that distributes the records to check and see whether or not the number of sales that you are being paid in royalties --

THE COURT: "You" meaning lisensor?

MR. GRUMBACH: Yes.

Q To see that the seller of the album is not undercutting the number of records that he is purporting to you that you are entitled to get royalties on.

That is correct, is it not?

A Even if it is not in there, I still have the right to audit.

Q I just want to ask you about this auditing right.

When the sales are over for the album, how long is it customary for you to be able to send your accountants in to audit the records?

A When the right to the sales are over or the --

Q When the rights are over. How much longer do you have to go in there and check the books?

A Until the statute of limitation runs out, I guess.

Q Until that time they have to have their books available for you to look at. That's standard, is that correct?

A Yes.

Q You are entitled to see them?

A I would say so, yes.

Q And that is standard in the industry for a major

artist to have those rights?

A I told you, it is a right. It has nothing to do with the industry. They can audit any time.

MR. GRUMBACH: Thank you. I have no other question.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. SCHURTMAN:

Q When you make an oral deal is the oral deal sometimes reduced to writing later?

A Yes.

Q In such instances is it your view that you have an oral deal, that you have a deal even before the writing is made?

A Yes.

Q And have you been involved in situations where the oral deal was in fact performed in whole or in part before the writing was made?

A Definitely.

Q Now, in connection with the license and leasing agreements that you were asked about, I noticed that you mentioned a designation of territories.

Are these deals for foreign rights or U. S. rights?

A Foreign.

Q What you were just talking about had to do with foreign rights?

A Yes.

Q When you spoke about a length of time of three to five years, that related to foreign rights?

MR. BERGEN: Objection. He is leading him, your Honor.

THE COURT: Yes.

Let's just go back.

MR. SCHURTMAN: I will rephrase the question. May I?

THE COURT: Just start this area again, please.

Q You testified in response to questions in cross examination that the licenses were a period of three to five years. My question to you is: Does that deal with domestic or foreign rights?

A Foreign.

Q And you testified about a sell off of albums. Does that deal with domestic or foreign situations?

A Foreign.

THE COURT: I am so unfamiliar with it I don't understand it.

Why would there be a sell off right only for

foreign rights?

What is a sell off?

THE WITNESS: In other words, if you have a deal for one year, and, say, at the end of the year you no longer have the right to manufacture that album, but you may have 20,000 manufactured, already produced in your warehouse, so you could sell -- you have to give them an affidavit that you have 20,000.

THE COURT: I think I understand. Why would there be a provision for sell off only for foreign? Do you mean records in a foreign warehouse or what?

THE WITNESS: I only license my records, in other words, all my records are produced by me in the United States. So, any time I give a license it is only for the rights to England or France to make that record.

THE COURT: So as far as you personally were concerned, are you telling me that you don't make licenses to a domestic record maker to sell records in the United States?

THE WITNESS: Of his, no.

MR. GRUMBACH: I didn't hear the last thing, your Honor.

THE COURT: He said, "Of his."

THE WITNESS: In other words, I may take a record from Argentina, someone's record and have a license to use it in the United States for three to five years. Or, I may give one of my records to a foreign country to license. And, those are the particular details of that kind of a deal.

I have never licensed an American record made in the United States to produce in the United States. I just sign the artist and if I sign the artist the record is mine forever. And, I pay him the royalty on it.

THE COURT: And you made the records and sell the records?

THE WITNESS: Or he makes the records and gives it to me, I buy it from him and give him a percentage.

THE COURT: And you distribute --

THE WITNESS: He licenses the records to me forever if it is in the States. If an artist comes to me with a record and says he wants $5,000 advance and a percentage, right, and I sign, that's it, that's my record. He turns over all his rights and title of that record to me for the percentage and advance.

THE COURT: Let me see if I can summarize it. If we are talking about licenses, we are talking about,

I guess, copyrights. Is that what we are talking about?

THE WITNESS: I am talking about a particular product, a finished product, a recorded album.

THE COURT: When you say that somebody in Argentina may let you have a song, or whatever you said --

THE WITNESS: An LP, another record company. If a company in Argentina says to me would you like to sell my record in the United States, I will license it to you.

THE COURT: That means they make the record down there?

THE WITNESS: They make the tape and I make the record here.

THE COURT: And you produce the records and put the records out and pay rolalties to the fellow in Argentina, right?

THE WITNESS: Right, and they pay the artist.

THE COURT: Now, is it true that you may have a tape of yours and somebody in Argentina wants to sell records down there, right?

THE WITNESS: For me, right.

THE COURT: So you do the same fellow in Argentina as you described before. You send the tape down to him, give him the right to make records and sell them in Argentina?

THE WITNESS: Correct.

THE COURT: And there you license him for three to five years; you give him a sell-off right?

THE WITNESS: Right.

THE COURT: But, you are saying that as far as within the United States is concerned, you do not and have never had a tape of yours that you have given to another manufacturer in the United States and licensed him to produce records from that tape, is that right? You just don't do that kind of business?

THE WITNESS: No. I would take a tape from an artist and give him an advance in percentage. But, then it is my property. It is not for two, three, or five years.

THE COURT: In other words, it is a permanent thing. You have bought it from him.

THE WITNESS: Right.

In other words, usually the artists come and say I want to make a record and you finance the record for them, you sign them to a contract. Some artists come with a finished record, and the only thing is, before you put the money out and to make it, this way you buy it already made.

THE COURT: A little while ago when Mr. Bergen was

questioning you, I was under the impression, and I think you told me that you engage in one way or another in a lot of license transactions, and except for four, five terms, the basic terms of these boiler plate things that everybody understands.

THE WITNESS Right.

THE COURT: Were you referring to these licenses back between you and the foreign people?

THE WITNESS: At that time that's what I was referring to. That's my major --

THE COURT: You do a lot of that.

THE WITNESS: Yes.

THE COURT: And as far as some artists in the United States who may have a tape and sells it to you, would that be an --

THE WITNESS: That's another form. One is a foreign license agreement form and the other is a purchase or artist contract form.

THE COURT Are they standard forms too?

THE WITNESS: Yes.

THE COURT: All right.

BY MR. SCHURTMAN:

Q One last question, Mr. Masucci.

Have you personally have any experience

licensing masters for use in special TV promotions?

A No.

MR. SCHURTMAN: No further questions.

THE COURT: Anything else?

RECROSS EXAMINATION

BY MR. BERGEN:

Q Mr. Masucci, do you know what record company Mr. Lennon is under contract to?

A Apple, I think, or Capitol.

Q Have you ever heard he is under a contrac to EMI?

A No. I may have, I'm not sure.

Q When you were talking about when artists come to you with a record or you sign an artist, you were talking about a ccntract similar to the one between Mr. Lennon and Capitol. In other words, the record company signs the artist to its label?

A Right.

Q And that means that whatever records that artist makes for your record company, you own those records in perpetuity, those masters, I am sorry?

A Right.

Q And isn't it standard in the recording industry that reported contracts with artists are exclusive?

A Yes.

Q When you purchased Tico Records from Mr. Levy, did you purchase the inventory or the inventory plus the master recorded?

A Both.

Q And did you purchase them in perpetuity?

A Yes.

MR. BERGEN: I have no further questions.

THE COURT: Anything else?

All right, you are excused.

(Witness excused.)

THE COURT:Let us take a short recess.

(Recess.)

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MR. PRETTYMAN: Your Honor, a couple of preliminary matters.

THE COURT: Okay.

MR. PRETTYMAN: The sales figures on the rock and roll album will be introduced in due course, but since your Honor asked about them yesterday very informally, I think it might be helpful if I just gave you the information I have so that you will have that in mind as we go along.

The latest figures on rock and roll domestically that I have, which would be through December 11th of '75, would be approximately 367,000.

THE COURT: December 11,1975, how many?

MR. PRETTYMAN: That would be albums and tapes, 367,000

For the rest of the world, and here the figures vary in terms of time, that is, for United Kingdom they are through January 8th of '76 and for the other countries through November 30th of '75, but the total for the rest of the world is on the order of 443,000. The exact figures will be, as I say, introduced in due course, but I thought since your Honor raised the point, I would clarify that for you.

THE COURT: Okay.

MR. PRETTYMAN: The other matter is, your

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Honor, you yesterday mentioned the possibility of both sides deferring the cross examination of the major witnesses until all of the major witnesses had testified on direct.

Defense counsel would, of course, like to accommodate your Honor in every way that we possibly could. In this case, however, we feel quote honestly that it would be detrimental to our rights to postpone the cross examination at least of the principal witnesses, Mr. Levy and Mr. Cahl, who were at the October 8th meeting.

THE COURT: You can see on Masucci. Masucci's cross yielded about two minutes worth of real information and it went on and on. Now, there is very little. It happens all the time. It particularly happens when defendants are examining plaintiffs. When we get to the plaintiffs examining the defendants, they don't waste so much time because they have their case in.

It is almost a psychological necessity. It just happens.

Now, I will trust you. You have to decide how you proceed, but I am going to tell you that I may intervene because I just don't want to have another long wasted period as I think there was with the Masucci cross very largely.

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Now, you will inevitaly be trying to get in a lot of points, wich are much better, much clearer done through your own witnesses, and so on, obviously, I am sure there are very important things to be covered in the cross examination of a witness in this case, but let us just use the time to the best advantage.

MR. PRETTYMAN: I do feel I do have to state on the record, your Honor, that first of all, I mostly respectfully disagree with you about Mr. Masucci's cross examination.

THE COURT: I was sure you would.

MR. PRETTYMAN: Secondly, even more to the point, this is a peculiar case in the sense that Mr. Levy is bring it and he is basing it on an oral contract which he claims he made. I think it is peculiarly necessary in a case of this kind that we be able to cross examine him as to precisely what happened and with great deference, as I say, we do want to accommodate you, I think we are entitled to cross examine him at length as to precisely what occurred and all the circumstances and any deviations there might be from his prior sworn testimony.

With that --

THE COURT: I don't think we have to argue

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in the abstract. I could go over with you, if you want me to, the cross examination of Masucci.

The business about the deposition reading yeilded nothing.

The --

MR. PRETTYMAN:: May I ask a question there, your Honor?

THE COURT: Look, it was so attenuated and I told you at the time and I cut you off and I meant it.

Now, the one point that I really got from that cross examination, there were two or three questions about the circumstances and considerations that he would have in entering into these oral agreements and that he would do it with Mr. Levy because of a long standing relationship.

However, he wouldn't do it with a stranger such as Lennon. That helped and amplified his direct.

And there were one or two other points, but a lot of it could have been brought out as well on your own testimony.

Let us go on.

MR. PRETTYMAN: Your Honor, I have to object in the strongest possible terms to your Honor reaching a conclusion in regard to the reading of the testimony of Mr. Levy. You are reaching a conclusion at this stage

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of the case that that was meaningless. The fact that Mr. Levy would swear under oath that he got the full story from Mr. Masucci and he got an entirely different story than what Mr. Masucci testified to here today, I regard as an extraordinarily important and I must object to your Honor having reached the conclusion that that was a meaningless cross examination on that point.

THE COURT: You can object all you want. Go ahead. Let us go.

MR. SCHURTMAN: I don't want to get involved in this last discussion.

I do wish to make two points to call to your Honor's attention.

Point No. 1. Mr. Philip Cahl , who has been in this courtroom and in Judge Mac Mahon's courtroom since the trial began received a telephone call yesterday afternoon that one of his brothers in Florida had a heart attack and was apparently very seriously ill. Mr. Cahl had to fly down to Florida this morning. I don't know whether I will be able to get him back.

THE COURT: You will have to worry about that.

MR.SCHURTMAN: The second point I wish to make is that Mr. Prettyman indicated that he wanted to get Mr. Bernard Brown, who is the gentleman from England, out of

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the country by this afternoon. I told him that in that case I would strongly urge that Mr. Brown take the witness stand some time this morning because I did not want to be in the situation where Mr. Prettyman examines him all afternoon and then shortly before 5 o'clock somebody says, okay, Mr. Schurtman, rush your cross examination.

I understand that Mr. Brown was here this morning and Mr. Prettyman or one of the other attorneys, please don't show up now. Come back this afternoon. I simply don't understand these tactics.

Why can't we put Mr. Brown on now and make sure that we have an orderly direct and cross examination instead of being rushed at the end of Friday afternoon.

MR. PRETTYMAN: Your Honor, Mr. Schurtman never said anything to me yesterday about having to rush this afternoon. He did suggest that Mr. Brown be put on this morning and I suggested that he be put on after lunch and I thought we had agreed that he would be put on after lunch.

THE COURT: I don't think anybody is playing games. I think that probably Mr. Prettyman has a reasonable estimate of how long he will need to examine Mr. Brown and I assume that you will have the opportunity to cross and I am sure everybody is contemplating that.

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MR. SCHURTMAN: All right.

THE COURT: What do we do now?

MR. BERGEN: May we have Mr. Levy on cross examination, your Honor?

THE COURT: All right.

M O R R I S L E V Y, resumed.

CROSS EXAMINATION

BY MR. BERGEN:

Q Mr. Levy, I am going to read to you from your testimony before Judge Mac Mahon at page 122 and I quote and this is cross examination by me:

"Q Mr. Levy, in your testimony, in your pretrial deposition at page 75 you testified and I quote, referring to who was at the October meeting.

'"Q Do you know a Mr. Bernard Brown?

'"A He was not there. Mr. Lennon is confused in his testimony that he was there. He came in two nights later at the birthday party that I threw for Mr. Lennon.

'"Q You are quite clear that Mr. Brown was not at this meeting?

'"A Yes, sir.'

"Do you recall that testimony?

"A Yes, sir."

THE COURT: Can I get this clear? Are you

reading from his testimony at the trial before Judge Mac Mahon?

MR. BERGEN: Yes, your Honor.

THE COURT: Or are you reading from a deposition that was read at that trial?

MR.BERGEN: I am reading from the Mac Mahon testimony and my first question to him was, I quoted to him from his deposition.

THE COURT: All right. Pick that up again, please.

Q You answered "Yes, sir."

"Q And was that testimony accurate, Mr. Levy?

"A To the best of my knowledge it was. I have no knowledge of meeting Mr. Brown that night. He might have been there, but he wasnot involved and he was not sitting for a long time at the table if he was there."

Do you recall that testimony, Mr. Levy?

A That was at the deposition.

Q No, I am talking about the testimony I read just now from the second day of the trial when I started cross examination.

A Excuse me, I do not understand. That is your reading of the deposition of June into the first day of the trial ; isn't it?

Q Part of it is, but part of it is following up -- I will read it to you again.

A You said that is my testimony at the trial.

THE COURT: Let us not argue. Let us just start over, Mr. Bergen, and read that whole selction and then you ask your question. Okay.

Q I am quoting from page 128 of the cross examination by me on January 13th:

"Q Mr. Levy, in your testimony, in your pretrial deposition at page 75 you testified and I quote, referring to who was at the October 8th meeting:

"Do you know a Mr. Bernard Brown?

"A He was not there. Mr. Lennon is confused in his testimony that he was there. He came in two nights later at the birthday party that I threw for Mr. Lennon.

"Q You are quite clear that Mr. Brown was not at this meeting?

"A Yes, sir."

Do you recall that testimony?

A Yes, sir.

Q And was that testimony accurate, Mr. Levy?

A To the best of my knowledge, it was. I have no knowledge of meeting Mr. Brown that night. He might have been there, but he was not involved and he was not sitting

for a long time at the table if he was there."

Do you recall that testimony?

A Yes, sir.

MR. SCHURTMAN: Your Honor, if Mr. Bergen is going to read prior testimony, can I ask that he read the balance relating to that subject.?

MR. BERGEN: I am just about to get to it.

MR. SCHURTMAN: All right.

THE COURT: I think I was a little -- Mr. Prettyman, I owe you an apology. When I said that cross examination, you know my remark, I wasn't trying to be disparaging to you. My only point and obviously everybody in this courtroom is very able counsel and, as such, I rely on you to help me get the trial accomplished in the most expeditious manner.

I mean that. I cannot decide whether there should be cross examination or not or how long it should be. I have no way of knowing that.

I just ask you to take seriously what I have said because my observations, I think, are the result of some degree of watching trials and I think that we can conceivably, without doing violence to anybody's rights, maybe save some hours if you simply bear this in mind and do the best you can. It is just something for you to consider.

MR. PRETTYMAN: It is a little awkward for me, your Honor, because I thought I was bringing out to be very honest with you, something that was extraordinarily significant.

THE COURT: I will give it the most piercing thought. I get your point and I certainly don't mean to indicate I won't consider it, of course I will, and so I really retract my remark.

It was an unfortunate remark and I think your point was well taken.

Let's go on on that basis. All right.

Q Quoting again from your trial testimony, Mr. Levy:

"Q Was Mr. Brown there or wasn't he there?"

Now, I am going over to page 129.

"A It seems he was there now."

"Q So your testimony was inaccurate on that point?

"A To the best of my knowledge, it was accurate at that point, but I have no recollection of Mr. Brown that evening.

"THE COURT: Well what has happened between then and now to change your mind?

"THE WITNESS: Half a dozen people says he has been there, sir, but he was not involved in the conversation.

"Q Was it a fact, Mr. Levy, that you heard Mr. Brown testify in an oral deposition in this case that he was there?

"A And other people do remember him being there."

Can I just continue with one more question and answer.

"Q What other people?

"A Mr. Cahl believed he was there. Miss May Pang testified he was there. Mr. Lennon did, but he was not involved in the conversation at our table to my recollection."

Do you recall that testimony?

A Yes, sir.

MR. SCHURTMAN: Would you finish the part about Mr. Cahl's recollection.

MR. BERGEN: Fine.

Q Quoting from page 130.

"Q Did I understand your testimony correctly just now" --

THE COURT: Again, is this the transcript before Judge MacMahon?

MR. BERGEN: Yes, it is.

Q "Question. Did I understand your testimony correctly just now that you think Mr. Cahl remembers him being there?

"A It is his recollection has been refreshed, too, that's correct.

"Q But he did "and the word is "testimony", but I think it should be "testified" in his deposition also that Mr. Brown was not there, do you recall?

"A I am not sure what Mr. Cahl testified in his deposition.

"Q You read Mr. Cahl's testimony.

"A No, sir.

"Q Have you talked to him about this case at all?

"A Yes, sir.

"Q Have you talked to him about whether Mr. Brown was there?

"A Yes, sir."

Then I went on to read a portion from Mr. Cahl's deposition. Is that sufficient, Mr. Schurtman?

MR. SCHURTMAN: That is sufficient.

Q In the testimony in this trial of January 14, page 126, beginning at 125, you testified:

"Q Who was present at this meeting?" Referring to the October 8 meeting.

"A Harold Seider, John Lennon, May Pang, Phil Cahl, myself and later, I am informed, Mr. Bernard Brown.

"What's his name?

"Q Bernard Brown?

"A Bernard Brown.

"Q Mr. Levy, you had previously testified that your recollection was that Mr. Brown was not present.

"A It was my recollection at the time that I testified, Mr. Schurtman, and I still cannot really place him there because he did not get involved in any conversations with what was going on or I don't believe he was there most of the time. I really don't."

Do you recall that testimony, Mr. Levy?

A Yes, I do.

Q Can you tell us now which is it: Is it that Mr. Brown did not get involved in the conversation or that you don't believe he was there most of the time or at all?

A Well, I really still under oath I couldn't honestly swear that he was there. I have no recollection of Mr. Brown.

Now, if everybody is going to say he was there, I still don't remember the man being there at that meeting. He was certainly not involved in any of the discussions that took place. That I could swear to no matter what anybody says. He was not involved in the discussions that took place.

Q But you cannot swear to whether he was there or

not?

A No, I guess I cannot.

Q At your deposition page 75, Mr. Levy, you swore not only that he was not there, but that Mr. Lennon was wrong, isn't that correct?

A That was an honest answer as my recollection at that time and I was being questioned for three solid days there and with five lawyers and I tried to be candid and answer the questions, Mr. Bergen, and I imagine there I may have made a mistake in recollection or anything else, but I tried to be honest and candid and answered the questions to the best of my ability.

Q Mr. Levy, that testimony that you gave was during the morning of the first day of your deposition?

A I know that.

Q The fact that it was three days has nothing to do with it, does it?

Could you have been wrong about some other things that happened on October 8?

A I believe I have testified to my recollections, my beliefs and tried to be honest about what took place that day, Mr. Bergen.

Q I am not questioning your honesty. I just asked you --

THE COURT: Look, Mr. Bergen, you don't have to say that to the witness. You don't have to comment to him. You just ask questions. We can make this go along.

Q Mr. Levy, is it possible that you could be wrong about other things that took place that night?

A Mr. Bergen, if you say anything is possible, anything is possible in our society today.

Q I am talking about the night of October 8, 1974, Mr. Levy.

A I have tried to be honest about it, but anything is possible.

Q Mr. Levy, I show you a document previously marked as Defendant's Exhibit AJ for identification and ask you if you can tell the Court what that is?

A It is some pages out of the guest book up at the farm.

Q That is the guest book from your farm in Ghent, New York?

A Yes.

MR. BERGEN: I offer this in evidence, your Honor.

THE COURT: Any objection?

MR. SCHURTMAN: No objection.

THE COURT: Received. AJ.

(Defendant's Exhibit AJ received in evidence.)

Q Mr. Levy, looking at Defendant's Exhibit AJ in evidence, can you tell me where the names of the people appear who were at the farm the weekend of October 17, 18, 19 and 20?

A There is a name here, 10-19-20.

THE COURT: Keep your voice up.

A 10-19-20 and somebody signed Dick Tracy, USA.

Q Do you recognize that handwriting?

A No, sir.

Q That is on the bottom of the first page.

A Right.

Q Maybe we can short cut this. Do the names of the people on the second page, are they the names of the people who at least signed the guest register for that weekend?

A I wouldn't be sure if it was all of them or if there is additional people.

Q I just asked whether they were the ones who signed it that weekend?

A I imagine it would be.

Q Can you review the list and tell us whether there were people other than the ones who signed the guest register who were there that weekend?

I think to save time, I think the only ones that cover this weekend are on the second page.

A No, that is not so. 10-19 somebody wrote Dick Tracy.

Q Except for Dick Tracy.

THE COURT: Did he participate in the discussions?

THE WITNESS: I can't swear he was there, your Honor.

THE COURT: Okay.

A Let's see if we can make it out. That is Winifred and Phil Cahl.

Q You are talking about the first name?

A I haven't got my candies, I didn't think I was going to testify. I have pollups in my throat, your Honor.

THE COURT: Will cough drops help you?

THE WITNESS: Yes, but I have pollups.

Q That is the first line Winifred and Phil Cahl?

A Yes.

THE COURT: What is your question?

MR. BERGEN: I am just trying to ask him to tell us whether there were people other than the ones who signed on this page who were at the farm that weekend.

So if he could just review the names, I don't

think it is necessary to read them.

A I can say this, everybody is not forced to sign the book. The book sits there and people sign it and it is not a question of signing the book.

THE COURT: Let me ask you to do this: You don't have to make a lot of explanations or excuses or anything else. You listen very carefully to Mr. Bergen's questions and the other lawyer's questions and you answer those questions and nothing else. If he asks you were there other people at the farm that weekend than on this list the thing to do is to look over this list and say yes or no and, if it is yes, give the names.

THE WITNESS: Yes, sir.

THE COURT: Okay.

A The first line is Winifred and Phil Cahl.

Who is the second one?

Q I think it says Jesse Ed Davis.

A A musician, Jesse Ed Davis.

Q Eddie?

MR. SCHURTMAN: I have a more legible copy here, would that help.

MR. BERGEN: Thank you.

Q Mottau.

A The next line is Ken Asher. The next line is

May Pang. The next line is John Lennon.

The next line looks like Keltner.

Q Jim L. Keltner.

A The next line looks like a Cynthia Webb. The next line looks like—

Q Klaus Voormann.

A Klaus Voormann. Lucy H. Powell. Cathy and Jerry Masucci.

Q The next one looks like Maureen O'Connell.

A Maureen O'Connell. Norman Shuretsky.

Q My question is can you tell us the names of any other people who were there that weekend?

A I think there was a couple of ladies with the musicians. I think there was one or two ladies with the musicians. I don't know if they were wives or what. Are they in there? You seem to be more familiar with this. What was this one?

Q Klaus Boormann.

A Who is this?

Q Lucy Powell, I don't know.

A I can't place her.

Q Do you recall the names of any other people who were there during the weekend? I don't mean for the entire weekend, I mean just for the weekend?

A I am not sure, there was a piano player that showed up late. I can't place the musicians, Mr. Bergen, by actual names. I know there was one musician who staved up late, is he on there?

Q Yes, Mr. Asher.

A Mr. Asher is that one.

Q Can you tell me which people were not to the best of your recollection right now, were not with Mr. Lennon? In other words, people other than musicians or Mr. Lennon?

A Mr. Shuretsky and Brook Shuretsky, O'Connell was not with the Lennon group. Masucci was not with the Lennon group.

Now, this is a strange name, Lucy Powell, that's a local town, North Chatham.

Q You don't know who Lucy Powell is?

A Off the top of my head, no.

Q You say she was not with the Lennon group?

A I don't know. I really don't know.

Q Anybody else --

A Phil Cahl was not with the Lennon group.

Q Can you tell us the names of any people other than the ones you have just listed who you believe were not with the Lennon group who were also there that weekend?

A I would have to use something to refresh -- there may have been more, there may have not. I really can't.

THE COURT: I just don't think we can wait indefinitely.

THE WITNESS: I really just can't.

Q Do you recall when was the first time that you invited Mr. Lennon to your farm?

A I think I might have invited him the night of the birthday party as a casual thing, if you are not doing anything for the weekend, if you feel like coming up, great.

And, he said he was going to see Mick Jagger but the real invitation was made on the Monday night when he got back from Jagger's, when we talked about he was bringing in the musicians, he had already progressed to bring the musicians in and we were talking about rehearsals.

MR. BERGEN: Your Honor, may I just have an answer

to the question, please. I asked a very simple question.

A I'm sorry. Monday night I think. I think first it may have been the night of the party.

Q For the coming weekend, the weekend of the 11th and 12th.

A Right, yes.

Q And that's how you found out that Mr. Lennon was going to Mr. Jagger's house because you invited him to the farm?

A No. He told me he was going someplace else. One night he told me he had just come from Jagger's house.

Q Had you planned this weekend with the guests other than Mr. Lennon and the musicians prior to the time that you raised the subject with Mr. Lennon about coming to the farm for that weekend?

A The first weekend that he didn't come or the one that he did come.

Q The one that he did come.

A The one that he did come, Masucci decided to come up, I mentioned it to him, and -- I got to give you a background of the farm, Mr. Bergen. I always have eight, ten, 12, 15 people up on the weekend and even people call on a Friday and say can I come up this weekend. My home is open that way up there.

Q Mr. Levy, I want to read from your deposition in this case. On June 2, 1975, page 215:

"Q Had you planned this weekend with these guests" -- referring to people other than Mr. Lennon and his group -- "prior to the time that you raised the subject with Mr. Lennon?

"A No."

Do you recall that testimony?

A Yes. That's what I just said to.

Q I will read it again:

"Have you planned this weekend with these guests prior to the time that you raised the subject with Mr. Lennon?

"A I would say no." Do you recall that testimony?

A Yes.

Q You testified yesterday at page 235:

"Q Who paid for the expenses of housing and feeding the people that weekend?

"A I did. I believe I was reimbursed from one or my companies, from Adam VIII. I'm not sure they reimbursed me. I think I was."

Do you recall that testimony?

A Yes, sir.

Q And you were reimbursed for the expenses for

the guests that weekend, for all the guests by Adam VIII; is that correct?

A I couldn't put it that way because I'll tell you ow it works, Mr. Bergen.

MR. BERGEN: Your Honor, I asked Mr. Levy a question and ever time I appear to ask him a question he goes on and gives me an explanation.

THE COURT: Why don't you start this way: Mr. Levy, see if you could answer a question just yes or no, and then we will worry about getting explanations after that.

Can you say did you get reimbursement for the weekend expenses of all the guests, even those beyond the Lennon group?

Can you answer that yes or no?

THE WITNESS: Probably yes.

THE COURT: All right. Next question.

Q Do you recall -- what would confuse me about that question was, I don't know if I got it all from Adam VIII. The original question was from Adam VIII.

MR. GRUMBACH: Your Honor, I can't hear the question.

THE WITNESS: The whole question before was did I get it from Adam VIII and that was the explanation.

I don't know if I got it all from Adam VIII.

THE COURT: But you got reimbursed for all of it?

THE WITNESS: I got reimbursed for all of it. That's how the policy is.

Q Mr. Levy, you testified that you and May Pang and John Lennon drove up in the car on the afternoon of August 17th.

A That is correct.

Q Do you recall anybody else being in the car with you?

A I think I testified I didn't think so.

Q Can you tell us whether Mr. Lennon and May Pang were sitting in the front seat with you?

A Wait a minute, yes, they were. Wait a minute, yes, they were sitting in the front seat with me. And the reason --

Q Do you recall anybody sitting in the back seat?

A I said I wasn't sure. The reason I'm --

THE COURT: Just a little slower.

A I don't think so.

Q Do you recall if Mr. Eddie Moto drove up to the farm with you also?

A No.

Q And he was sitting in the back seat?

A It is possible. Rightnow he is not in my head.

Q You referred in a couple of places in your testimony tc a fellow names Jessie and ifentified him as one of the musicians who came from Vermont. Do you recall that?

A Right. Very amicable fellow.

Q Mr. Levy, referring to Defendants' Exhibit AJ, do you see Mr. Davis' name?

A Yes, sir.

Q And next to it, I believe it appear to indicate that his residence is Marina Delray, California?

A Yes, sir.

Q And right below Mr. Davis' name is the name of Mr. Eddie Moto, which indicates his address as Lindboro, New Hampshire.

A Yes, sir.

Q Is it possible that you confused Mr. Davis and Mr. Moto?

A Absolutely, completely possible because I didn't know which was which. There was one who said who lived on a farm. It is very possible, completely possible.

Q The weekend at the farm where Mr. Lennon went up, that was not part of this deal from October 8, 1974, was

it?

A No. That was just for the offering to make it easy in my interest as well as his interest.

MR. BERGEN: Your Honor, I ask again. You asked a question that could have been answered yes or no, and the witness continues to volunteer.

THE COURT: I think it is fine if the witness understood what your question was. I didn't particularly understand it so I can't very well blame the witness for going beyond something. We won't go back over that. We have got an answer.

Q Mr. Levy, , referring to your testimony before Judge Mac Mahon, and quoting from page 140:

"Q You were aware and you had been aware, Mr. Levy, that Mr. Lennon was a member of the Beatles?

"A Yes.

"Q Do you know when the Beatles became popular initially?

"A I guess around '62, '61, '62.

"Q And who had they been under contract with since then?

"A EMI

" Q And the whoel recording industry knows that, don't they?

"A I would say so."

Do you recall that testimony?

A Yes, sir.

Q Was it accurate?

A To the best of my knowledge, yes.

THE COURT: Does that conflict with any testimony he has given in this courtroom?

MR. BERGEN: I don't believe he has testified about --

THE COURT: Why don't you ask him? What in heaven's name is the need for asking a person whether he recalls testifying before Judge Mac Mahon about something you haven't even asked him directly in this court and which is probably as obvious as all get out? This is a very cumbersome procedure. Just ask your questions and get on with it instead of referring back endlessly to what happened before Judge Mac Mahon and the deposition. If there is a clear contradiction between what he says in court and what he said on a prior occasion, of course that is useful. Basically, just ask your questions directly.

Q Mr. Levy, you also knew that the Beatles and John Lennon had an exclusive contract with EMI.

A Are you reading?

Q I am asking a question.

A Yes.

Q And --

A I am sorry, I answered that too quickly because of the way it went down. What was that question again?

MR. BERGEN: Do you want to read the question?

THE COURT: Yes.

(Question read.)

A Yes, with the exception of our rights in the United States.

Q What rights are those?

A From my understanding, that I knew general knowledge, was that there was exclusive, they licensed Apples, the Beatles' company in the United States, Apples licensed Capitol and my knowledge of the contract is that Apple withheld the mail order right before they gave it to Capitol.

Q The mail order rights in the United States?

A Yes, the mail order rights in the United States.

Q According to your testimony that is the only exception to the EMI, Apple, Capitol agreements with respect to the Beatles and John Lennon?

A I didn't read the contract. That's what I

heard. That's also common knowledge in the industry.

Q I believe your testimony on direct was that the basis of your knowledge for that was Mr. Alan Klein?

A Mr. Klein and -- yes.

Q And an article in Playboy Magazine?

A That I read subsequently, yes.

Q And you also knew that this was a written contract?

A Absolutely.

Q And did you know on October 8th that Lennon had an exclusive contract with EMI that was in writing?

A I would assume so, yes.

Q An exclusivity is standard in the recording business, isn't it, Mr. Levy?

A Yes.

Q And everybody knows when an artist is under an exclusive contract to a recording company that contract is an exclusive one, isn't that correct?

A Yes, but there are exceptions depending on the contract.

Q And is it the only reason that companies go and sign artists and give them advances, is to have them on an exclusive contract for that period of time on putting out the product?

A Yes. But, the bigger the artist the more exceptions there may be, Mr. Bergen.

Q Doesn't exclusivity mean they could only record for the purposes of making phonograph records with one company?

A It depends what's in the contract. Yes, it means that but then there are also contracts in the business that even though it is an exclusive contract, if you took an artist like Carol Channing, if she was signed with a recording contract, she would put in the contract if she were making a motion picture and in order to make the motion picture the sound track album may have to go to a company affiliate with the motion picture. Another big artist, if she was doing a Broadway musical, the soundcast album might have to go to the producers of the Broadway musical. In the general term you are absolutely correct. An exclusivity is what the record company seeks but when an artist is important they can force in clauses that they want for situations that arise, like this here.

Q Mr. Levy, I read from your testimony at 142:

"Q Doesn't exclusivity mean that they can only record for the purpose of making phonograph records with one company?

"A Yes. That is what exclusivity would mean."

Do you recall that testimony?

A Yes, I recall this added to that in his courtroom too.

Q Mr. Levy, I am going to ask you again. Page 142:

"Q Doesn't exclusivity mean that they can only record for the purpose of maing phonograph records with one company?

"A Yes, that is what exclusivity would mean."

Do you recall that testimony?

A Yes, sir, and I qualified the answer in front of Judge Mac Mahon in further questioning exactly as I did today.

THE COURT: I just can't imagine any greater waste of time. I just can't conceive of it. I happen to be the trier of the fact. If you are not making any impression on me, it is conceivable it may not be too valuable. It seems to me, just as an original proposition, that the basic consideration of importance is, what in fact did the contract say.

Now, naturally, you haven't come to the point when you are putting that in. But, the relevant contracts between the Beatles or Mr. Lennon or both of them, and Capitol and EMI I would assume furnished the basic

groundwork on which this case must operate. And, it may be of some importance as to what Mr. Levy understood from things other than reading the contract. I don't say it doesn't, but I mean to argue back and forth and read depositions as to what exclusivity means, exclusivity is a term defined in the dictionary. What he said is -- I don't know whether it makes a lot of difference -- he knows sitting here and I am sure he knew then that the actual terms of how exclusive something was depends on the contract. He made clear he never made the contract and never had anybody read it for him. Why do we belabor this?

MR. BERGEN: Your Honor, I wasn't aware Mr. Levy testified he never had anybody read the contract for him.

THE COURT: Why don't you ask him?

MR. BERGEN: I was just about to, your Honor.

THE COURT: That is a lot more relevant. I would like to see the contracts in --

MR.SCHURTMAN: We were planning to put the contracts in at some point, your Honor.

THE COURT: Is there any agreement between counsel as to any crucial effects of the contracts? For instance, is it a matter of dispute between the parties as to whether as of October 1974, Mr. Lennon was under an exclusive

contract with Capitol? Is that in dispute?

MR. BERGEN: Your Honor, the plaintiffs claim there is an exception in these three agreements that run from EMI to Apple and to Capitol. The EMI agreement is the basic, exclusive recording contract between EMI and the Beatles, as a group and individually. And, in 1969 there was an agreement between EMI and Apple.

THE COURT: I haven't read the contracts, but let us assume for the moment, just for purposes of argument, Mr. Schurtman, that the defendants are right. I assume they are contending there was an exclusive contract which covered everything including mail order rights. Isn't that your contention?

MR. BERGEN: Absolutely, your Honor.

THE COURT: Just assume for purposes of argument for a moemnt, Mr. Schurtman, that the defendants are right on that interpretation of the contract. Can that contract, can such a contract simply be abbrogated and voided because Mr. Levy believes or even is led to believe by somebody other than a representative of Capitol or EMI that there is no such exclusive provision?

MR. SCHURTMAN: Obviously Mr. Levy could not abbrogate the Capitol contract. On the other hand, I suppose it is conceivable, and we are dealing with a

hypothetical situation, your Honor, it is conceivable Mr. Lennon acting on behalf of himself and Apple might make a contract any way. That contract might interfere with somebody else's contract but that doesn't mean they couldn't make the contract and then it is a question of sorting out who is liable to whom.

But, your Honor, I respectfully suggest that if you would look at one provision in the Apple, Capitol contract, admittedly there is a dispute to what it means but the language is clear.

MR. BERGEN: Your Honor, you cannot look at one provision Mr. Schurtman would have you look at. That is one provision in a contract that is probably sixty pages long. We strongly object to that one clause being --

THE COURT: I just want to get the positions. You would concede as a matter of law that if we look at the contract or the contracts, and if the contracts are properly interpreted to provide exclusive rights in favor of Capitol and EMI covering Mr. Lennon as far as mail order, retail fulfillment, whatever, with no exceptions relevant to this case, you would certainly concede, I take it, that Mr. Lennon would have no right to go and make a contract with Mr. Levy, nor would Mr. Seider have a right to make a contract with Mr. Levy that could in any

way bind Capitol or EMI. You would concede that,wouldn't you?

MR. SCHURTMAN: That is correct, with one exception: If there were subsequent ratifications it might change the picture.

THE COURT: Ratifications by who?

MR. SCHURTMAN: Ratifications by Capitol and EMI.

THE COURT: My hypothesis was -- obviously assuming no such ratification.

Now, step 2, because it clears one pont and it is an obvious point. Let us again assume that there was an exclusive contract, binding Mr. Lennon to Capitol and EMI with no exceptions relevant. Let us assume that Mr. Lennon purports to make a contract with Mr. Levy, and says "I am able to do so." Just assume that hypothetically. Now, I frankly don't understand how he can even do that, because if you say he could make a contract for himself, that is the clearest abbrogation of Capitol's right and EMI's rights, is it not?

MR. SCHURTMAN: Capitol might very well have a claim against both Mr. Lennon and Mr. Levy but that doesn't necessarily excuse what Mr. Lennon did vis-a-vis Mr. Levy.

THE COURT: I think we have to be very careful. There may be some right personally against Mr. Lennon for some sort or something if he misled Mr. Levy. But, I am talking about the kind of contract that you are talking about in this case, and that is a contract which would enable Mr. Levy to put out this record. That's what you are suing on. Now, I don't understand frankly, speaking as a matter of law, and not making any findings or indications on the facts at all, but I am just talking as a matter of law, I don't understand how, if there is an exclusive contract, how Mr Lennon could possibly go and make a valid agreement which would permit him and Levy to put out this record. That is exactly the thing that Capitol has a right to not have done.

MR. SCHURTMAN: Let me explain our position very briefly, your Honor.

Mr. Bergen was correct in his explanation of how the various contracts worked, and I think even Mr. Levy got it straight basically.

Originally the Beatles were under contrac to EMI. Then the rights were given -- the United States rights as I recall it -- were given to Apple on condition that Apple then enter into a contract in the United States with Capitol.

When Apple entered into a contract with Capitol, giving the United States rights to Capitol, they used the following language --

MR. BERGEN: Your Honor --

MR. SCHURTMAN: This is part of my arrangement, not evidence.

MR. PRETTYMAN: I object to this.

MR. BERGEN: It is argument.

MR. PRETTYMAN: I object to reading portions of contracts into this record at this point. The contract will have to be presented to your Honor as a whole and linked together. We will have explanations of all of it. I think it is improper to have this kind of argument at this point.

MR. SCHURTMAN: I aill not quote. I will simply state in conclusory terms that it is our contention that an agreement between Apple and Capitol contained an exception for what we have loosely referred to as mail order rights. I am deliberately trying not to quote the language to avoid any objections.

We say that exception was in the contracts, it is in the contracts. Mr. Levy had heard about the exceptions from the Beatles' former business manager and from something he read in an article in Playboy Magazine,

hpbr 3 Levy-cross

and he raised that point with Mr. Lennon and Mr. Seider and if you believe Mr. Levy --

THE COURT: This is all repetitious. I go back to my question to you. I am asking you -- maybe you answered and I didn't get it -- I am asking you just as a legal proposition because it helps me to sort out the questions of law that I have to worry about, as a legal proposition, let us assume it contrary to your contention that the relevant contracts bound Mr. Lennon exclusively to Capitol and EMI with no exception relevant to this case.

Now, let us assume that Mr. Lennon purported to go and make an oral contract or even a written contract with Mr. Levy agreeing to make songs that Mr. Levy could put out on this record and Mr. Levy's label.

You have already stated that such a contact couldn't bind Capitol and EMI unless it was ratified.

Wouldn't that mean that Levy and Lennon just couldn't go ahead and make that record? I don't understand how they could go ahead and make the record. Maybe there would be some right by Mr. Levy against Mr. Lennon for expenses or something but the right to make the record, I don't see how that would exist.

MR. BERGEN: Your Honor, the plaintiffs' originally had a fraud claim and they dropped it.

MR. SCHURTMAN: I would like to address myself to that point. I am glad you brought it up.

THE COURT: Would you answer my question?

MR.SCHURTMAN: I agree, your Honor, absolutely that we couldn't make the record at that point and we would be left with a possible claim for damages.

THE COURT: Then as far as the right to make the record, does it not stand or fall entirely on the interpretation of that contract or those contracts?

MR. SCHURTMAN: The right to make the record, yes.

THE COURT: If the contract provisions are indeed exclusive in the manner I have suggested hypothetically, then it would mean that under no set of facts would Mr. Levy have a right to make the record; if they are not exclusive, then of course it depends on whether a contract was made.

MR. SCHURTMAN: That is right, your Honor.

THE COURT: But, if the written contracts are indeed broadly exclusive, then that would end the case.

MR. PRETTYMAN: Your Honor --

MR. SCHURTMAN: I thought you were addressing me at this point, your Honor. It would not be the end of the case. It would be the end of our argument that we

would have a right to make the record. What would be left of our case: One thing definitely, and that would be a claim --

THE COURT: Please --

MR. SCHURTMAN: I want to make a motion at this point, your Honor, a formal motion on the Court based on what Mr. Bergen just reminded me of.

When we started the trial before Judge Mac Mahon, Judge Mac Mahon indicate there were just too many issues for the jury to consider, it was terribly confusing, some of the issues were internally inconsistent and in order to simply the case I agreed to drop certain issues because at that time I thought we had a jury trial. One of the issues that I dropped, one of the claims of the original complaint was an alternative claim for fraud, and the alternative claim arose in just the manner that your Honor just described, that if Mr. Lennon and Mr. Seider represented to Mr. Levy that they had an exception to the exclusive and if it turned out there was no such exception we are claiming that Mr. Lennon and Mr. Seider had defrauded Mr. Levy and his companies and we were entitled to damages.

When Judge Mac Mahon pointed out the difficulties of trying all these issues to a jury I looked at the issues and I decided, quite frankly, that in a jury

trial it would be extremely difficult for me to argue on the one hand that they were telling the truth when they said there was an exception, and on the other hand that they were lying when they said that. Based on my assumption I agreed to drop the fraud claim because I thought it was too complicated for the jury.

Now we have a non-jury trial, and I make it a formal motion at this point to leave to amend my complaint to reinstate the fraud claim because I think the Court trying this case without a jury can certainly differentiate between inconsistent claims.

I do make this a formal motion. I don't think the defendants will be prejudiced in any way. I didn't drop these claims until Monday morning of this week, and I assure you it was solely for purposes of not confusing a jury.

MR. BERGEN: Your Honor, Mr. Schurtman's chronology is just a little bit mixed up.

Those claims were not dropped for the sake of not confusing the issue. Judge Mac Mahon had said a long time ago in October, when we argued before him -- the plaintiffs originaly started this lawsuit in the State Court. Two weeks later they brought an antitrust case in this court. On the eve of trial in October, when the

plaintiffs realized they were not going to get to trial in the State Court before Mac Mahon would reach the case for trial, they made a motion, literally days before we were supposed to terminate discovery and go on Judge Mac Mahon's ready calendar to amend the federal claim to bring in all the state claims.

At that time we had an argument in Judge Mac Mahon's court on whether that should be done or whether it should not be done. At first Judge Mac Mahon seemed to be leaning against the amendment and finally he turned around and said ye, I will let it all come, it may be complicated but when we get into the trial before the jury we will sort it all out.

The first thing that happened on Monday morning when we sent before Judge Mac Mahon in his robing room, Mr. Schurtman announced that the plaintiffs wanted to drop the fraud claim, the monopolization count of their antirust claim, the damage to reputation claim and the predatory pricing claim and Judge Mac Mahon granted that motion, those claims were dismissed on the first day of this case before we even picked the jury. We went through a day and a half of trial and we have been before your Honor for two and a half days.

THE COURT: I will deny the motion.

MR. PRETTYMAN: Your Honor, may we go back to the point we were discussing before.

THE COURT: Yes.

MR. PRETTYMAN: I quite agree with your Honor's analysis of the contracts if we ever get there. May I suggest to your Honor the proper order is the other way around.

THE COURT: Why is that?

MR. PRETTYMAN: Because if the parties never made an agreement, never purpoted to make an agreement, never reached any kind of an agreement then you never even get to the problem of whether there was an exclusive contract or anything else. You have heard only Mr. Levy on direct examination. I think you will find, after the other witnesses get on, that you will never have to reach the problem of the contracts because they never purported to make an agreement. If they never purported to make one, you never get to the problem whether they had a right to make one. You don't take the right before you find out what they intended to do.

THE COURT: I have to tell you that I sit here, and this probably is hard on you, but I sit here with intense curiosity to know what is in the underlying contracts.

It seems to me that anybody going in for a meet-

ing on October 8th, 1974, goes in with obviously a background so to speak of some contractual obligations and rights. I know I can't get the whole case at once and I apologize profusely for suggesting that you turn topsy-turvy in any way. But I must tell you that I would appreciate having some idea as soon as I can of the kind of legal setting in which Mr. Lennon walked into that whatever went on. I just think it would make it more meaningful to me. It would make it more meaningful to me even to know that there is a problem.

MR. PRETTYMAN: When he gets on we will ask him very directly as to what he understood his legal rights to be. But, we can't just be sent a bunch of contracts --

THE COURT: Are they that complicated?

MR. PRETTYMAN: Yes, they are. They have to be explained and you will hear testimony not only what they meant but how the contracts operated. It is complicated because you have three sets of parties involved and three sets of rights running through them. You have got one language that does have to be explained, your Honor. I don't think there is any question about what it means but I can't just hand those to your Honor.

I think one thing you have to look at now, your Honor, is what this witness did or didn't do in relation

to those contracts because he has testified he didn't look at them ahead of time and didn't look at them afterwards.

THE COURT: Let us not just belabor what he understood about exclusivity and read back and forth the other testimony. If you can just please bring any contradictions or supplements as to what he did and we can get on with other witnesses.

MR. SCHURTMAN: Your Honor, may I have two more minutes?

THE COURT: Yes.

MR. SCHURTMAN: To protect my record on the motion you have just denied, let me point out that this was a motion to amend the pleadings in the course of trial, if you will, not even at the end of the trial. The defendants have shown absolutely no prejduite that would result to them from such an amendment. Amendments of this type are normally granted as a matter of course even if it wasn't in the original pleadings.

In this case it was. They were prepared to try the issue. I have explained to you why I dropped it. It will not require any additional testimony because it is a legal inference based on whatever testimony you hear any way and I urge your Honor to reconsider your denial of my motion on that one point. I am not trying to bring

anything else back to the case.

MR. BERGEN: Your Honor, I submit the defendants will be prejudiced. This is not a case where somebody comes in and tries to amend their complaint during the course of the litigation or even at trial.

THE COURT: Let me get this straight. Judge Mac Mahon had, pursuant to your motion last fall, let in these other issues including a claim of fraud?

MR. BERGEN: The entire State Court complaint, your Honor, yes.

THE COURT: I will ask you, Mr. Schurtman, what was the occasion on which you dropped the fraud claim? Was that the first day of trial or in a pretrial conference?

MR. SCHURTMAN: The first day of trial --

MR. BERGEN: Your Honor, I think we can get the transcript.

MR.SCHURTMAN: The first day of trial in the robing room just before we picked the jury.

THE COURT: Did Judge Mac Mahon ask you to do this?

MR. PRETTYMAN: No, sir.

MR. BERGEN: No, sir.

MR. SCHURTMAN: The prior conference Judge Mac Mahon had asked us consideration to simply this

before the jury. The next occasion with Judge Mac Mahon who does not hold many pretrials, was in the robing room before we picked the jury. He was laying down some ground rules and I said, "Judge, I have given some thought to the question of simplifying the issues before the jury and in an effort to simply that, I am prepared to drop certain calims."

He said which claims, and I said the Sherman Act Section 2 claim, the injury to reputation claim, the fraud claim and, as I recall it, there was one other claim. And, I said I will drop them and he said motion granted, claims dismissed.

MR. PRETTYMAN: May I make a suggestion, your Honor, and that's -- I think a reporter took that down -- may we submit to to your Honor so you will see exactly what happened?

THE COURT: Mr. Schurtman, I don't think people drop claims lightly. I took this case and I told you that I was taking it really under the same ground rules basically that would have obtained in a jury trial before Judge Mac Mahon. I was expecting the same efficiency and so forth that you would have in a jury trial. Now, this wasn't brought up to me. I think the time to bring it up would have been at the beginning of the trial with me

and I think a trial before a judge is different than a jury and I probe things which are of interest to me, but I think to now add there -- I think the case had to be set and crystallized at the beginning of the trial and I am not really inclined to allow you to go back.

I will review the transcript. Now, we have had our discusison. I wanted to raise the point of the contract. I have had that on my mind all morning. I wanted to raise that with you, and you have heard me ask about that. Some of the concessions that were made, I think are helpful, at least to me although they may have been known to counsel as to these issues all along. When we get back at 2:15, I will certainly try to not inject any more of these questions about matters of law, procedure and so forth.

I think we have to get the witnesses on and use the whole afternoon for testimony, and if you want to present something at the end of the day or the beginning of the day on Tuesday, all right.

MR. BERGEN: Your Honor, the prior conference Mr. Schurtman referred to was the argument of the motion brought by the plaintffs to amend the complaint to bring in all these federal complaints.

(Luncheon recess.)

AFTERNOON SESSION

2:20 p.m.

MR. PRETTYMAN: Mr. Bernard Brown, please.

B E R N A R D B R O W N, called as a witness by defendants Capitol Records and EMI, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PRETTYMAN:

Q Mr. Brown, I will ask you to speak up in your testimony and also to speak slowly, if you will, so that everyone can hear and understand you.

Would you give your full name and home and business address to the reporter, please?

A My full name is Bernard Lawrence Brown, and my present business address in London is 11th Floor, Alenblese House, Albert Enbankment, London SE 1.

Q With what company are you presently associated?

A Martin-Coulter Music Limited.

Q And what is your title with that company?

A Director of Administration.

Q When did you first become connected with any phase of the entertainment business?

A I think it was 1965.

Q How did you become associated with the industry?

A I joined the Decca Record Company in London.

Q You were with them for how long?

A Approximately four years.

Q What did you do for Decca?

A I was working at that time in their copyright department.

Q What did you do when you left Decca?

A I took the position as assistant copyright manager with a firm of music publishers.

Q And their name?

A Campbell-Connelly & Company Limited.

Q What was your title there?

A Originally assistant copyright manager.

Q What did it become then?

A The copyright manager retired and I took over his position as copyright manager.

Q When did you leave that company?

A In December 1969.

Q Where did you go?

A I then joined the Apple organization or rather I was employed by Abkco Industries Incorporated who were at that time managers of the Apple organization.

Q Could you spell ABkco, please.

A A-b-k-c-o Industries, which is an abbreivate for Alan B. Klein & Company.

THE COURT: Is it called Abkco Corporation?

THE WITNESS: Industries, Inc.

THE COURT: What is that again? That is a musical corporation. What does it have to do with the Beatles or whatever?

THE WITNESS: They were at that time the management company for Apple in London.

THE COURT: I didn't get what Apple in London is.

Q Would you explain at that time what the relationships were between the various Apple companies?

A Yes. Abkco were managers of the Apple complex which consisted of Capitol Corps. Limited.

THE COURT: I just want to get that down clearly at this point. You say Abkco Industries, Inc. was the management for all the Apple companies?

THE WITNESS: That is correct.

MR. PRETTYMAN: Now he is starting to give you the Apple companies.

THE COURT: All right, just take it slowly. What are they?

THE WITNESS: Apple Corps Limited, which was the record division.

THE COURT: Where was that located?

THE WITNESS: Savile Road.

THE COURT: In England?

THE WITNESS: In England.

THE COURT: All right, go on.

THE WITNESS: In addition there was Apple Publishing Limited.

THE COURT: What did that do?

THE WITNESS: It was a general music publishing company, publishing works other than Beatle copyrights.

THE COURT: Where were they located?

THE WITNESS: They are all located at the same address.

THE COURT: In London?

THE WITNESS: In London, yes.

THE COURT: Other companies?

THE WITNESS: Apple Films Limited.

THE COURT: What did it do?

THE WITNESS: Generally made films for the Beatles.

THE COURT: Also located in London?

THE WITNESS: Yes, your Honor.

THE COURT: Any other companies?

THE WITNESS: There were subsidiary publishing companies, part of the Apple group but not connected with Apple. They were more individually companies.

BY MR. PRETTYMAN:

Q Was there any Apple company in New York at that time?

A Yes, I believe Apple Records NewYork.

Q Were they connected in any way with Abkco Industries?

A Yes, they were managed also by Abkco Industries.

MR. SCHURTMAN: Could we fix a point of time?

MR. PRETTYMAN: This is when he first joined the company in 1969.

Q Was there also an Apple company in California?

A Yes, Apple Records California.

Q Was that also connected with Abkco Industries?

A Administered by Abkco Industries,Inc.

Q In case you didn't make this clear, Abkco was an abbreviation for Alan and Betty Klein Company, is that correct?

A That I wasn't aware of. I always thought "B" was the Klein's second initial.

Q What was your initial position with Abkco Industries?

A I was general manager of Apple Publishing Limited.

Q Did you thereafter assume a different position?

A Yes. On the dates I cannot be specific, but it was early 1972 I was also appointed general manager of Apple Corp sLimited, the record division.

Q So that as of that date you were both general manager of both the publishing and the record division?

A That is correct.

Q Did there come a time you left Abkco?

A Abkco expired on the 30th of March, 1973, at which time I was requested by the Beatles to carry on in the same and I accepted.

Q When you refer to Apple Corps Limited --

A Tnat is by whom I was employed.

Q When you say the management was terminated, do you mean Abkco's management of the Beatles was terminated?

A Terminated by the Beatles, yes.

THE COURT: You said a little while ago that you joined Abkco in 1969.

THE WITNESS: I left my previous employment

December '69 and I commenced the first of January 1970 with Abkco.

THE COURT: This is probably purely technical but let me get it.

At a later point you said that you became general manager of Apple Publishing and then general manager of Apple Corps. Was --

MR. PRETTYMAN: I think he said Apple Records, your Honor. Maybe I can clarify it for you.

The first position with Abkco was as general manager of the publising division. Then he became general manager of both the publishing and record division of Abkco, and then he left to go with Apple Corps Limit.

Q Am I correct, Mr. Brown?

A That is correct.

THE COURT: In other words, when you earlier said thatyou were general manager, you meant you were employed by Abkco and you were general manger with respect to publishing?

THE WITNESS: That is correct, your Honor.

THE COURT: And then you became general manager in Abkco with respect to the records, right?

THE WITNESS: That is correct.

MR. PRETTYMAN: And publishing.

THE COURT: And so after the termination of the Abkco agreement, what did you do? You formally became employed by the two Apple companies?

THE WITNESS: Yes, although formally employed by Apple Corps Limited on the understanding it embraced my duties with Apple Publishing Limited.

THE COURT: What position did you take in Apple Corps?

THE WITNESS: Similarly, general manager of the record division and of the publishing division of Apple Publishing Limited. It is a little confusing --

THE COURT: That is all right. Go ahead.

BY MR. PRETTYMAN:

Q How long were you with Apple Corps Limited?

A From the 1st of April 1973 until the 31st of May 1975.

Q Was that when you went with your present company?

A That is correct.

THE COURT: Is Martin-Coulter in any way connected with the Beatles?

THE WITNESS: None whatever, no connection whatever.

Q Is it however involved in the music business?

A Very similar to my previous employment with Apple, Yes.

Q It publishes music?

A Record production.

THE COURT: Both publishing and records?

THE WITNESS: Yes.

Q Did there come a time in September 1974 when you came to the United States?

A Yes, I came to the United States, from memory, I think it was the 29th or 30th of September 1974.

Q Where did you go?

A To Los Angeles.

Q Was that in connection with business?

A Yes, it was in connection with forming a new publishing agreement for John Lennon with ITV Music Corporation.

Q Was it in fact two different companies?

A The same deal was being done with the California company as was being done with the London company, ITV Music Limited.

Q Did there come a time when you left Los Angeles?

A Yes, I left Los Angeles on the morning of October 8th.

Q Where did you go?

A I flew to New York.

Q Do you recall approximately when you arrived?

A Approximately I would think early afternoon.

(Continued on next page.)

Q Did you have a purpose in coming to New York?

A Yes, to see John Lennon to discuss what had happened in Los Angeles.

Q And did you in fact meet with Mr. Lennon on that day?

A I did.

Q Where did you meet him?

A Initially at Record Plant East.

THE COURT: What was the last work?

THE WITNESS: East.

THE COURT: E-a-s-t?

THE WITNESS: Yes.

Q How long did you stay at Recond Plant East?

A I would think possibly an hour, an hour and thirty minutes maybe.

Q And did you in fact have a discussion with Mr. Lennon at Record Plant East?

A Yes.

Q Do you know a lady named May Pang?

A I do.

Q Was she present?

A She was present at that time.

Q And do you remember approximately when you left the Record Plant East on that day?

A I would think around 5:30.

Q And where did you go?

A To Mr. Lennon's apartment.

Q Where was that? In New York City?

A It is in New York City. I recall it was somewhere in the 70s but I can't remember the address.

Q Who was there at the apartment, if anyone, when you arrived?

A I don't think anybody was at the apartment when we arrived. The "we"refers to John Lennon, May Pang and myself but I believe we were joined shortly afterwards at the apartment by Mr. Harold Seider.

Q Did you know Mr. Seider?

Q Yes, I had flown over from Los Angeles with Mr. Seider.

Q Who was he at that time?

A Who was he?

Q Yes.

Do you know what his position was or what his duties were at that time?

A I knew he was advising, legally advising John Lennon at that time.

Q Had he originally been connected with Abkco Industries to your knowledge?

A Yes, my first meeting with him was when he was vice president of Abkco Industries, Inc.

Q Did you know him to be an attorney?

A I did, yes.

Q Do you know how long Mr. Seider stayed at Mr. Lennon's apartment?

A Not very long. I would think about thirty minutes.

Q And was there any discussion at the apartment about plans for later in that evening?

A Yes. It was mentioned that Mr. Lennon had been invited by Morris Levy to go to the Club Cavallero to dine, but John had decided he would prefer to dine prior to goingto that club.

Q Did you know Mr. Morris Levy at that time?

A At that time, no, sir.

Q Was it explained to you at the apartment what the meeting or why the group was going to see Mr. Levy?

A Not in detail at that time, no.

Q Can you recall anything that was said about why you were seeing Mr. Levy?

A John's actual expression was "I have a hassle with Morris Levy, I have to go along to make some explan-

ations."

Q Did he say anything about whether he did or didn't wish to stay for the entire evening with Mr. Levy?

A Yes,that was precisely the reason why we dined first.

Q What was the reason?

A That he didn't wish to spend the whole evening with Mr. Levy at the club.

Q Did there come a time when you left Mr. Lennon's apartment?

A Yes, I left shortly afterwards. I would have thought approximately 6 o'clock.

Q Did you leave alone?

A Yes.

Q And where did you go?

A I returned to my hotel?

Q Which was where?

A The Plaza Hotel.

Q What did you do then?

A Generally cleaned up and got ready for the evening. John had previously said that he would pick me up at the Plaza.

Q Where did you wait for him?

A In the lobby of the Plaza.

Q Did anyone join you there?

A Yes. I was joined shortly before John Lennon arrived by Harold Seider.

Q How long was Mr. Seider with you in the lobby?

A Approximately five minutes.

Q What occurred then?

A John Lennon arrived in a limousine with May Pang and we then proceeded on to the restaurant for dinner.

Q Who was in the limousine on the way to the restaurant?

A John Lennon, May Pang, Harold Seider and myself.

Q And the chauffeur?

A And the chauffeur, of course, yes.

Q Did you go directly to the club Cavallero?

A No, we went to a Japanese Restaurant, Benihana.

Q Did you have dinner there?

A We did.

Q Do you know what general area that restaurant is in?

A Yes. It is on [illegible] Street between 5th and 6th Avenues.

Q Who had suggested that restaurant as a place to eat?

A I had.

In fact, John asked me where I wished to dine and I preferred to leave it to his judgment, but having dined at Benihana on two previous occasions I rather fancied the food there.

Q Do you have any idea when you began dinner or arrived at Benihana's?

A I would think we arrived there some time around 8 o'clock.

Q Around when?

A 8 o'clock, or shortly after. I think John pickec us up at 8 so we were there five or ten minutes afterwards.

Q Did the four of you, in fact, have dinner at Benihana's?

A We did.

Q What did you do then?

A We left Benihana's, I would think, around 9:30 and went directly from there to Club Cavallero.

Q How did you go?

A From memory, by a car, but whether it was the same car I wouldn't swear to it.

Q A limousine with a chauffeur?

A Yes.

Q Did all four of you go together?

A Yes.

Q Mr. Brown, would you please tell us as best you recollect, and speaking slowly, precisely what happened, as best you recall, from the moment that the car drove up to the Club Cavallero?

A Yes. We arrived at the club and got out from the car, into the entrance of the club, went through the entrance --

Q Excuse me, had you ever been there before, incidentally?

A No.

Q Excuse me, go ahead.

A And into what one would best describe as a dining room and proceeded to a cubicle on the left-hand side, coming from the entrance.

Q Did someone meet you?

A From memory I think it was Mr. Phil Cahl who met us.

Q Had you met him before?

A Yes, in London.

Q In what connection?

A It was during my employment with Campbell, Connelly & Company Limited. We did represent one of his

catalogs in the UK.

Q When you say one of his catalogs --

A A catalog which I was introduced to him by my then managing director, Mr. Phil Cahl, head of Picture Tone Music.

Q When he came up to you, did you remember him?

A I wouldn't say instant recognition. It was a vague recollecton.

Q Did he introduce himself to you?

A Yes, he said "Phil Cahl".

Q Washe the one to take you to a table?

A Yes, he took us directly to this table which was set for a meal at the time. John explained to Mr. Cahl that we had in fact eaten and a waiter was called to clear the place servings from the table.

Q Did anyone join you?

A Yes, Mr. Cahl immediately departed, presumably to go and fetch Mr. Levy.

Q Did Mr. Levy join you?

A Yes, within a couple of moments.

Q Did you then sit down at the table?

A We did.

Q Would you please describe the table and the seating arrangements?

A The table was of a cubicle type, U-shaped cubicle. John Lennon sat in the far left-hand corner from the entrance, in the far left-hand corner, May Pang was left to him, Harold Seider next to that, myself on the end, and then there were two free standing chairs. Mr. Levy was at the far right-hand corner, Mr. Cahl was on my right.

Q If I may, going around the table from the far free-standing chair on the right there would be Mr. Levy in one free stand, Mr. Cahl on the free standing, you on the end, then Mr. Seider, Miss Pang and Mr. Lennon?

A That's correct.

THE COURT: I am afraid I will have to have the reporter read it back.

(Record read.)

THE COURT: There was kind of a bench against the wall.

THE WITNESS: It was a U-shaped bench with a table set into the area.

THE COURT: And then two chairs--

THE WITNESS: Two free standing chairs on the outside.

MR. PRETTYMAN: Your Honor, he can draw it.

THE COURT: If it is of any importance he better draw it. I have got my directions mixed up.

THE COURT: Do you want to have this marked, Mr. Prettyman?

(Defendants' Exhibit CA was marked for identification.)

THE COURT: I will receive that exhibit.

(Defendants' Exhibit CA was received in evidence.)

BY MR. PRETTYMAN:

Q Do you recall approximately how long you were at the club, Mr. Brown?

A Approximately two hours, I would think.

Q During that time did you have anything to eat?

A No, certainly not personally.

Q Do you recall anyone else having anything to eat?

A I recall the latter part of the time we were there, I think it was May Pang and possibly John himself had a very light snack type of thing, but I honestly cannot remember what it was. It certainly wasn't a meal.

Q Did the group have anything to drink during the course of the evening?

A Yes, to my knowledge I think we all had a drink.

Q How many drinks did the group have, if you know?

A I would think two, certainly two, possibly three.

Q Rounds?

A Yes.

Q Do you recall what --

MR. SCHURTMAN: Your Honor, I object if it is of any significance, may we find out which person had how many drinks?

MR. PRETTYMAN: I was just about to ask him.

THE COURT: Allright.

Q Do you recall how much each person had?

A I know what I had myself and I think Mr. Levy was drinking the same as I was.

Q What were the two of you drinking?

Scotch whiskey and ginger ale.

Q Do you recall what any of the others were drinking?

A I have an idea one had a Coke, but I am not absolutely certain. I must be honest.

Q Except possibly to go to the men's room, were you there during the entire evening?

A I was there during the entire evening.

Q Did you leave to go to the men's room, if you recall?

A I did not leave to go to the men's room.

Q Was Mr. Lennon there during the entire two hours?

A I believe he may possibly have visited the men's room on one occasion.

Q Otherwise he was there during the entire time?

A He was.

Q How about Miss Pang?

A Similarly, possibly one occasion.

Q And Mr. Seider?

A I don't recall him leaving, although he may have done so.

Q How about Mr. Cahl?

A Mr. Cahl, I think, was absent possibly on two occasions for a very brief duration, which I assumed to be something to do with the club. They seemed to be connected with the club there and he left to go to other tables just for very brief moments.

Q How about Mr. Levy?

A Similarly.

Q Did he leave on several occasions?

A On two, I think.

Q Was he gone very long?

A No, two to three minutes possibly.

THE COURT. Was that the same for Mr. Cahl,

he left two or three times briefly?

THE WITNESS: Yes, I think it was twice each of them left very briefly, your Honor.

Q Mr. Brown, please tell us the conversation that you recall, as best you recall it, from the time that you arrived through the evening? I realize that it is difficult when we are talking about two hours, but just give us everything that you remember.

A Well, apart from the initial introductions when we arrived, we then sat at the table. There were a few general remarks. Possibly the weather or something very general, mundane remarks anyway.

Then John was then talking to Mr. Levy immediately about a subject we had been discussing earlier at his apartment, namely, the fact that he had just completed salvaging, the term he used was salvaging tracks from the album that had originally been produced with Phil Spector.

Q Do you remember what he said about those tracks?

A I think he was rather pleased that he ultimately managed to get something from, I think, as I understand it, initially he had more tracks then he was eventually able to get something that came up to his standards from and I got a figure of I think he said six tracks, he had been

able to salvage from he tapes that he had subsequently got back. He had already explained that he had difficulty in getting the tapes back from Mr. Spector.

Q You say he had already explained. He had already explaind this evening to --

A No, this was during the afternoon or the evening at the apartment.

Q Explained to you, I understand.

A Yes.

Q All right.

Then what?

A And he previously told me durihn the afternoon that he was quite honestly not aware how it was going to be packaged and it was his intention to go to Los Angeles to Capitol in the near future to present htem with a package and say, how are we going to market this?

Q Did he say anything about that while he was at the Club Cavellero?

A Yes, I believe it was remarked again when he first spoke about having salvaged these tracks and it was at that stage that Mr. Levy remarked --

THE COURT: I want to get, if you don't mind, before you get into what Mr. Levy said, did Mr. Lennon say anything that evening at thattable about going to Los Angeles

or anything like that?

THE WITNESS: I feel sure it was mentioned because he told me in the afternoon and it seemed to be a repetition of what had been said in the afternoon.

THE COURT: You feel sure he said what at the table? Just tell me that again.

THE WITNESS: That he had managed to salvage and I think the number was six tracks from the original number of tracks he had had and he intended taking it to Capitol in Los Angeles for them to decide how the record would be marketed.

THE COURT: Okay.

Q Proceed.

A I think -- I am certain that it was at that time that Mr. Levy then said,"We could do a great job for you on that, John."

Then mentioned the question of television promotion, mail order and marketing in general.

Q Did he explain what he meant when he said "Mail order, TV"?

A Only in a general way at that time, saying that it could be done, it could be a great job done on this and John Lennon's immediate reaction to that was to ask Harold Seider how he stood with EMI, if such a venture

were possible.

Harold Seider remarked that, "Well, you know as well as I, John, that you are tied up to 1976."

Then, I believe, Mr. Levy said, well, was it not possible to get a release from EMI?

Mr. Seider remarked that in his opinion --

THE COURT: Who asked about the release? I just didn't catch that. Who asked about a possible release?

THE WITNESS: John Lennon originally, your Honor.

THE COURT: What did he say about that?

THE WITNESS: He just said, would there be any possibility of him going into such a venture and Harold Seider remarked that, no, he knew he was under contract to EMI until 1976 and in his opinion it was impossible for such a release to be obtained.

THE COURT: Are you saying that Lennon at some point asked about a possible release?

THE WITNESS: He asked his lawyer, was it feasible, in other words, the thing that Mr. Levy just mentioned.

MR. PRETTYMAN: I think you are confusing something that Mr. Levy said a little later.

Q Did Mr. Levy ask whether they could get a release?

A Yes, Mr. Levy then asked Mr. Seider, was there any possible chance of getting a release, to which Mr. Seider replied, in his opinion it was an impossibility.

THE COURT:Okay, go ahead.

A (Continuing) Mr. Levy then remarked that nothing was impossible and any way he would just like to tell them what he could do under the proposition that he was putting forward on the TV and mail order campaign.

MR. SCHURTMAN: Your Honor, excuse me. Could we find out what Mr. Levy said?

MR. PRETTYMAN: I am going to get to something else first and then we will get into that in detail, if I may, your Honor.

Q Prior to the time that Mr. Levy began saying what he could do, did he make any request of Mr. Seider?

A Not to my knowledge.

Q Was anything said about getting permission from EMI? If I have the sequence wrong, just tell me.

A Yes, surely.

Yes, the immediate reply from Mr. Levy then to Harold Seider was, if such a release was obtainable,who would be the person responsible at EM for giving such a

release.

Harold Seider replied that it would Mr. L.G. Wood, the group director of EMI, but that again, in his opinion, there was, I think the expression was not a cat in hell's chance of it.

THE COURT: Let me get that. What was the name that Seider gave?

THE WITNESS: Mr. L.G.Wood.

Q Did you know Mr. Wood at that time?

A Yes, I had known Mr. Wood for a number of years.

Q Do you know what his position was with EMI?

A Yes, he was group director of EMI records.

Q Did it appear to you that Mr. Levy knew who Mr. Wood was?

A I would have assumed so. That is an assumption. I would have thought the length of time Mr. Levy had been in the business, I would have assumed that he had known Mr. Wood.

Q That is an assumption on your part?

A An assumption, not necessarily known him, but would have known of him from trade papers as much as anything else in the industry.

Q Did Mr. Levy at that point make any suggestion

to Mr. Seider about what he might do?

A Well, he then said, I think the initial remark was, when are you leaving for London, Harold?

Q Was that said in a jocular fashion or seriously?

A I think it was said seriously in the first instance and Mr. Seider replied that he had no plans whatever to go to London.

Q Did Mr. Levy pursue the matter?

A Yes, from that time the matter was pursued and he said, well, notwithstanding that, let's show you what we could do for you.

Q Tell us as much as you recall about any discussions about what he might do for you?

A It was only that it could be done as a package under the television campaign, general and mail order marketing process.

Q Were figures discussed?

A Figures were discussed. I think also stated by Mr. Levy, approximate sales potential and a lot of things in general, which quite honestly I don't recall those.

Q Is there any particular reason why you were not paying further attention at this time?

A Yes, I was in discussion with Mr. Cahl on my right.

Q What did those discussions have to do with?

A Initially he was asking me any news on my previous employer with whom he was quite familiar, the managing director of Campbell-Connelly & Company, Limited and then the discussion progressed further to something of a more personal nature.

Q Would you tell us what that was?

A Yes. Mr. Cahl was wearing a particular type of watch which a colleague and myself had expressed interest in while we were in Los Angeles. Unfortunately in Los Angeles the price of the particular watch was higher than either of us wanted to pay and as Mr. Cahl was wearing one of these, I mentioned to him that I had been looking for such a watch and were the prices any better in New York than in Los Angeles.

He immediately said, "Oh, well, would you like it"?

In fact, literally took it off his wrist and said, have this one. Naturally, I declined that offer, but said I would be interested if it was possible for him to obtain a similar one within the price range that I was prepared to go. I believe he asked me, you know,

what sort of maximum price range and I explained that in Los Angeles I think they were $350. I was hopeful that there would be something similar at a figure something less than $200.

He said he thought he had a good chance of getting me one and would let me know the following day.

He asked me at which hotel I was staying and said he would give me a call at my hotel and let me know.

Q During the time did you hear snatches of conversation from the others at the table?

A Yes, I think they were still discussing in general to my mind various aspects of the particular type of operation that Mr. Levy was involved in.

Q Did you see any numbers being written down anywhere?

A Yes. They each had a table napkin and figures were being written on those. Primarily by Mr. Levy.

Q Did you hear anything said at any point about any agreement being reached about anything?

A Certainly not, no.

Q Did you, yourself, from these conversations have an impression as to whether, in fact, agreement was being reached?

MR. SCHURTMAN. Objection.

THE COURT: Sustained.

Q Do you recall anything else specific before the end of the evening, and I will take you through the end of the evening in a moment, Mr. Brown, but for the time being, do you recall any other pieces of conversation, specific pieces of conversation during the course of the evening?

A Only that then I think the remark I said earlier became possibly of a jocular nature when both Mr. Cahl and Mr. Levy kept repeating, "Well, when are you going to London, Harold?"

Q What was Mr. Seider's response? This was later now after the earlier conversation?

A Yes, surely.

Q All right, what was his response?

A In fact, I don't think there was any response, maybe a grimace.

Q Did there come a time when the evening broke up?

A Yes, I would have thought, as I say, I think we were there two hours. I would have thought that was around 11:30.

Q What happened?

A We all left and went to the entrance of the club. From memory, Mr. Cahl just said a very quick "Goodbye" or "Goodnight" and went back into the club.

Mr. Levy was standing talking to John Lennon and May Pang with Harold Seider and myself were just on the right.

The car had drawn up and they were standing outside the car just initially, all standing together, and ultimately Mr. Seider and myself walked off to the right because my hotel was only -- in fact, it was visible from where we were standing.

Q Did any of the parties shake hands and say anything about a "deal" or an "agreement"?

A I think that Mr. Levy shook hands with both

May Pang and John Lennon and I think the remark was, "Well, let's hope we can do something, John."

THE COURT: By whom?

THE WITNESS: By Mr. Levy to Mr. Lennon.

MR. SCHURTMAN: Excuse me, could I have the last thing read back?

THE COURT: I can't hear you?

MR. SCHURTMAN: Could I have the last thing read back? I couldn't hear it.

THE COURT: Surely.

(Answer read.)

Q Did Mr. Lennon reply to that?

A I didn't hear any reply as such.

Q You went back to your hotel?

A Yes, I walked up to the corner of Fifth Avenue. Mr. Seider went off to the right. I crossed the road into my hotel.

Q What happened the next day?

A I was in my hotel and, in fact, I did receive a telephone call from Mr. Phil Cahl to advise me that he had been able to obtain the type of watch that I was looking for.

Q What time of day was that, if you recall?

A 10:15, 10:30.

Q Did you make any arrangements between you?

A Yes, he then said, "If you are still interested, if you would like to come over to my office, you can collect it there," which I proceeded to do.

I went to his office, collected the watch, paid him the cash for the watch and --

Q Do you recall how much that was?

A Yes, $150.00.

Q Did he tell you what kind of watch he was giving you?

A No, he just said, "This is similar to the one last evening." It was, in fact, in a normal watch presentation, the name on the box was Benrus.

Q Then, did you leave his office?

A I left his office with him because it was my intention at that time to go to the record plant to see John again. He indicated that he was also going to the record plant to see John and we shared a cab to the record plant.

Q Was anything said in the cab that would have any bearing upon this case?

A Nothing whatsoever.

Q When you got to the record plant, who was there?

A Mr. Levy was there, an engineer who I had

recognized from the previous afternoon and one or two other odd people were around, I think for the reason that it was John Lennon's birthday and people had come in to wish him a happy birthday.

Q How long were you there?

A Possibly two hours, two and a half hours.

Q Did you hear anyone say anything to anybody else that would have any connection with this case, that is, about a TV package or about for whom the songs were being done or anything of that kind?

A No, the conversation more at that time was, Oh, congratulations on his birthday and that seemed to be the main theme of the conversation.

Q Did Mr. Levy say anything to you or to anyone else in your presence about this album being his or about his packaging it?

A No, I just said, "Hello" to Mr. Levy. Beyond that there was no conversation between us.

Q Did Mr. Cahl make any such comments?

A No.

Q Did Mr. Lennon make any such comments?

A No.

Q Then what did you do?

A I left the record plant and went directly from

there to a hire shop on Sixth Avenue.

THE COURT: To a what?

THE WITNESS: To a dress hire shop, your Honor.

THE COURT: I see.

A (Continuing) I had been advised by John Lennon that there was a musical function that evening, being a dinner at the Waldorf Hotel to honor a certain person in the business. John had suggested that he would like me to go along but felt that it would be adviseable for me to wear a dress suit.

Not having a dress suit with me, I went to this tailor's on Sixth Avenue with the express purpose of hiring a dress suit.

Q Did you then go back to your hotel later in the day?

A I think I went straight back to my hotel and I am sure the dress shop said they would deliver it within one hour. It was ultimately delivered to my hotel.

Q After you got dressed, what did you do?

A I didn't get dressed for quite a while because this was early afternoon.

Q Did you do anything in the afternoon connected with this lawsuit?

A Nothing whatsoever. I met another colleague

in the music business who lives in New York and spent, I think, probably a couple of hours with him.

Q You went back to your hotel and you got dressed for dinner?

A I went back to my hotel and got dressed in preparation for the dinner.At about between, I think, 7: to 7:45 I was joined by Harold Seider, who had brought a dress suit along with him, and he asked me would I be good enough to allow him my room for the purpose of changing.

Q Did he?

A He did do that. We then both proceeded downstairs, waited at the lobby once again for John Lennon and May Pang to arrive to pick us up.

Q Where did you go?

A Directly to the Waldorf Hotel.

Q Did you go in a limousine?

A We did.

Q Who was in that limousine?

A John Lennon, May Pang, Harold Seider, myself and the chauffeur.

Q At the dinner, did you see Mr. Levy?

A No, I didn't see him there.

Q Did you see Mr. Cahl?

A No. I didn't see either of them there.

Q Were you with Mr. Lennon at the dinner?

A Yes, the whole evening.

Q Did you go anyplace with him after the dinner?

A Yes, after the dinner he told me that Mr. Levy had invited his party back to the club as a little birthday celebration, as he was aware that it was John Lennon's birthday.

Q Was he enthused about going to the club or did he give any indication in any way?

A I think it was his sort of attitude, Well, it's my birthday, let's do it.

Q Did you go with him?

A I did.

Q Did Miss Pang go?

A Yes.

Q Did Mr. Seider go?

A Yes.

Q Did you go in the limousine?

A Yes.

Q Did you arrive together?

A That is correct.

Q What happened when you went into the club?

A This time we went through the same hallway entrace, but the table where we had sat the previous evening

was on our left and there was a long table in the main hall behind a pillar, if I remember rightly, which joined it as a "T" and we were directed to sit around this very long ellipitical table. There we split because John Lennon and May Pang were sitting at this end of the table with Morris Levy and I was at the far end of the table with Harold Seider and another previous colleague from Abkco, Pete Bennett.

Q Did you see Mr. Levy there?

A Yes.

Q Did he speak to Mr. Lennon in your presence?

A Yes.

Q Did he say anything about a deal between them or about any arrangement in regard to the album that this lawsuit is about?

A I was not within direct hearing, but I would have hardly have thought so, sir, because of the situation. It was a party atmosphere, very much so.

Q Did you hear anyone during that entire evening say anything along those lines, that is, about how the album would be published or who Mr. Lennon was doing it for?

A To my knowledge, the album was not mentioned at all that evening.

Q Did you leave with Mr. Lennon?

A No, left the club earlier with Mr. Pete Bennett and Harold Seider. John and May Pang were still at the club when I left.

Q You went back to your hotel?

A Yes.

Q Did you see Mr. Lennon thereafter on that trip?

A Yes, I went back to the record plant the following day purely with the purpose of saying "Goodbye" to John because I was leaving for London.

Q Was Mr. Levy or Mr. Cahl there at that time?

A Not to my memory, no.

Q Again, was anything said to you that would relate to any of the issues in this lawsuit on that occasion?

A Nothing at all.

Q Going back to the evening of October 8th, while you were at the Club Cavallero, was any invitation issued to Mr. Levy to come to the record plant?

A Yes, I think John asked him tocome along to listen to all the tapes that he had from Phil Spector.

Q Did he state what the purpose of that invitation was?

A I think the purpose -- he stated that the purpose of the invitation was that he had recorded a certain number

of tracks, but he was not able to use them all, but Mr. Levy was quite welcome to hear the ones that he wasn't able to use, although they were a very bad mix and not, in John's opinion, a commercial proposition.

THE COURT: I didn't get that. Mr. Levy was welcome to hear what?

THE WITNESS: All the tracks of the tapes that Mr. Lennon had gotten back from Phil Spector, your Honor.

THE COURT: I guess I will have to ask the reporter to read the previous answer.

(Answer read.)

Q Now, was that invitation in turn related to any dispute between Mr. Lennon and Mr. Levy?

A At the time I would not have been aware of it.

Q Did he state any purpose for allowing him to listen to those tapes?

A Not at that time, not in my hearing.

Q Did you then leave New York shortly thereafter?

A Yes. I left New York that same day and caught the night flight to London.

Q Just to complete the story, did anything happen in regard to the watch?

A Unfortunately, the watch broke down just after arrival in London. I sent it back to New York to the company

or to Philadelphia, in fact, to the company whose name was on the box. The watch was returned saying that this was not of their manufacture. They could do nothing for me.

Q Mr. Brown, you began by testifying that you came from Los Angeles to New York on the eighth. Could you possibly have been mistaken and could you have arrived on the seventh? Are you certain of those dates?

I ask because there were a lot of hours in that day.

A I feel certain it was the eighth. Am I allowed to look at a calendar?

Q Yes, if we have one.

A I came on a Tuesday.

Q You came on a Tuesday. Tuesday would be the eighth.

A That was the day I arrived from Los Angeles.

Q That was the day you arrived from Los Angeles?

A Yes, I know it was a Tuesday and I think it was the eighth, yes.

MR. PRETTYMAN: May I have just a moment, your Honor?

THE COURT: Sure.

(Pause.)

THE COURT: This might be a good time for a short recess.

MR. PRETTYMAN: All right, fine. I just have another few questions.

(Recess.)

(Continued on next page.)

MR. PRETTYMAN: No more questions, your Honor.

THE COURT: Cross.

CROSS EXAMINATION

BY MR. SCHURTMAN:

Q Mr. Brown, do you know Alan Klein personally?

A Yes, sir.

Q Was he the president or the chief officer of Abkco?

A To my knowledge, president.

Q Would it be fair to say until Abkco was terminated as manager of the Beatles, in 1973, Mr. Klein managed the affairs of the Beatles through Abkco?

A That is correct.

Q And for what period of time did he do that?

A To my knowledge, he joined them I think it was early '69 from March, April, '69 onwards.

Q Based on your experience with the Abkco organization, would you say that Mr. Klein would have been familiar with all of the contracts the Beatles had with EMI and Capitol?

A I certainly gave that impression.

Q Did you ever discuss the contracts with him?

A No, I was not involved with the United States side of it. My responsibilities were UK. My respon-

sibilities were United Kingdom and local territories.

Q You say you were in Los Angeles in September and early October 1974?

A That is correct.

Q To negotiate something or other on behalf of John Lennon?

A That is correct.

Q What were you negotiating?

A A publishing deal for songs written by John Lennon with ATV Music Corporation and ATV Limited, the London office.

Q Did ATV have anything to do with television?

A They do have the television company in England but I don't think they have it in the USA.

THE COURT: This related to songs written by Lennon?

THE WITNESS: Yes.

THE COURT: And ATV wanted to do what with those?

THE WITNESS: To publish them throughout the world.

Q Did your particular negotiations have anything to do with television?

A Not specifically. Television uses do come

into general publishing agreements as you are aware. In a broad term there would have been, yes, within the agreement.

Q Were you negotiating this deal in California on behalf of Mr. Lennon or on behalf of Apple or on behalf of the Beatles?

A In my capacity it was on behalf of Apple and in that capacity I assume and I think quite rightly I was expected to work on behalf of any of the Beatles, certainly in their publishing interests.

Q So that when you testified on your direct examination that you were representing Mr. Lennon in connection with these negotiations, did you in fact mean that you were representing Apple?

A I have been asked by Apple to go along not exactly representing. That was Mr. Weider's prerogative, to negotiate the agreement. I was there purely from English standpoint.

THE COURT: I don't understand that. Just from a technical standpoint, if there was to be an agreement, who would enter into the agreement? Would Apple enter into the agreement or John Lennon individually, or both or what?

THE WITNESS: John Lennon individually, your

Honor.

THE COURT: And Seider was negotiating on behalf of John Lennon?

THE WITNESS: That is correct, your Honor.

THE COURT: Then why were you there?

THE WITNESS: Because the deal was being done, after with the English managing director of ATV Limited and he was representing ATV Limited from the English end and I was representing John Lennon from the English end of it.

THE COURT: I don't think we ever got into that before. This agreement would have involved an agreement between John Lennon and ATV England, right?

THE WITNESS: And USA, your Honor.

THE COURT: I just want to take it one step at a time.

THE WITNESS: It was a worldwide deal, your Honor.

THE COURT: Maybe you don't understand my problem. I thought you said a minute ago there was an ATV English company?

THE WITNESS: Yes.

THE COURT: Whatever was contemplated here, did it contemplate that the agreement would embrace

John Lennon and the ATV England, at least in part?

THE WITNESS: Yes, your Honor.

THE COURT: And then it would embrace also ATV in Los Angeles?

THE WITNESS: Yes, your Honor.

THECOURT: And if you put those three parties together, then you have a contract covering the whole world?

THE WITNESS: Yes, your Honor.

THE COURT: And had you represented Mr. Lennon in discussions with ATV England?

THE WITNESS: Yes, your Honor.

THE COURT: I think the question touched this but I didn't get it quite clear, in other words, in this particular activity, you weren't really representing Apple, you were asked, I take it, to infomrally represent Lennon individually?

THE WITNESS: That is correct, your Honor. If I can be a little more specific, I was also handling the affairs of two of the other Beatles, Ringo Starr and George Harrison from a publising standpoint in England.

THE COURT: That was a different engagement than you are working for Apple?

THE WITNESS: My employment was with Apple

Corp. Limited but embraced the entire publishing and these were the other publishing companies I mentioned. I don't know whether one has to go in to detail with all the companies. George Harrison had a separate and Ringo Starr had a separate company and I was representing the US in all of those companies.

THE COURT: So there was a separate company in England for John Lennon and --

THE WITNESS: There wasn't a company for John Lennon. The other two had formed companies. John Lennon was on a personal basis.

THE COURT: There was a company for Starr and a company for --

THE WITNESS: George Harrison. The companies are respectively Startling Music Limited and Harrisones Limited.

THE COURT: And you represented John Lennon individually?

THE WITNESS: Yes, with particular reference to the U.S. administration of John's songs although he was doing the publishing deal with ATV. It was virtually watching to insure the UK was satisfactory and organized.

Q In your negotiations in California were you doing anything on behalf of Apple?

MR. GRUMBACH: May we distinguish, please, your Honor, Apple Record, Inc., a New York corporation, the defendant in this action and any other Apple companies there might be?

THE COURT: I thought he said he wasn't there for Apple.

Q W' was paying your salary at that time?

A Apple Corps Limited.

Q Did you receive any separate payments from Mr. Lennon?

A None whatever.

Q With whom did you negotiate in California?

A With Mr. Sam Trust, the president of ATV Music Co.

Q Anyone else?

A Yes, the gentleman who flew over with me was Mr.Jeffery Haith, managing director of ATV Music Limited in London.

Q Were any lawyers involved in these negotiations?

A Yes, Mr. Seider on behalf of John. Not from memory on behalf of ATV Music Co. at that stage.

Q Did you make a deal when you were out in California?

A I think the deal was fully discussed.

Whether it was actually signed in California, I am not aware.

Q When you came back to New York, did you tell Mr. Lennon that a deal hadbeen made?

A I naturally acquainted him with all the things we had discussed, assured him that his English end was fully covered.

Q Did you tell him it was to be put in writing?

A I don't think I actually mentioned that. All the terms had been agreed and John was already aware that the terms had been agreed, so the question of the formalization really didn't matter.

Q What airline, if you recall, did you fly back with from Los Angeles to New York?

A From memory, it was United Airlines. I may be wrong. No, it wasn't United. I am not familiar -- would it be American Airlines?

Q Could be.

A Or Western --

Q All right. Do you remember what time of day your flight left Los Angeles?

A Morning time. That's all I can say.

Q What time in the morning?

A I can't be specific.

Q Do you have any recollection of when you got to the airport that morning?

A Quite honestly, no.

Q Do you know at what airport you arrived at New York?

A Newark, New Jersey.

Q Do you know at what time of day you arrived in Newark?

A I would have thought, from memory, two, 2:30, maybe.

Q In the afternoon?

A Yes.

Q And what did you do when you arrived at Newark?

A From memory, there was a car that met us which brought me straight to my hotel.

Q Were you with anyone on that flight?

A With Harold Seider.

Q The two of you flew in together?

A That is correct.

Q You boarded the airplane in Los Angeles together?

A Correct.

Q And you had the car meet you and you then

went to your hotel?

A Correct.

Q Which hotel was that?

A The Plaza.

Q And approximately what time of day did you check in at the Plaza?

A How long does it take to come from Newark? 3:15 maybe.

Q Do you have any specific recollection?

A Does one normally when you check into a hotel? Quite honestly, I don't.

Q How long did you stay at the hotel after you checked in?

A Just the usual freshening. I would say half an hour.

Q What did you do next?

A I then caught a cab to Record Plant East.

Q Did you have dinner in Los Angeles Monday night? You say you came to New York on Tuesday.

A I imagine I did have dinner but I can't recall who I dined with.

Q I take it you don't recall where you dined?

A I was there for a week and I dined somewhere different every night. I don't recall every restaurant

I dined at.

Q At what hotel did you stay in Los Angeles?

A Beverly Wilkshire.

Q Do you remember what time you went to bed on Monday night? That would be Monday the 7th.

A No.

Q Was Mr. Seider with you that night?

A From memory I would say no.

Q Where was he, do you know? He was in Los Angeles I take it?

A He was in Los Angeles but he wasn't with me. He had other friends in Los Angeles and obviously he had the opportunity meeting with them.

Q When youwent to the Record Plant I believe you testified with Mr. Lennon and May Pang?

A That is correct.

Q What did you do at the Record Plant that afternoon?

A Just generally talking.

Q Did you listen to any music?

A There may have been music playing from the studio but I wasn't specifically listening to anything.

Q Did you discuss the Spector tapes with Mr. Lennon?

A They were mentioned when I was there. I believe John had told me his rpoblem he had in trying to obtain these tapes. In fact I do recall, I can recall hearing Ya Ya being played because it was an unusual title so I remember specifically that being played.

Q Where were you when you heard Ya Ya being played?

A Probably in the reception area.

Q And Ya Ya was one of the Spector tapes?

A Yes.

Q Did you hear any other Spector tapes being played?

A I heard one other, I think -- I can't be specific on this -- it was Bonie Maronie.

Q Those were the only ones you heard?

A Yes, Bonie Maronie I knew for many years.

Q You say you listened to these tapes in the reception area of the studio?

A I didn't specifically listen to them. I recall they were being played. We were standing around the reception and these were being played at the time. The studio door was right there.

Q In other words, you heard the sound wafting out of the studio?

A That's right.

Q Who were you standing with when Ya Ya was playing?

A I really don't know. Probably May Pang, possibly John Lennon.

Q You say Ya Ya struck you as an unusual tune?

A Unusual title.

Q Did you disucss it with either Mr. Lennon or Miss Pang?

A I might have briefly mentioned the fact, that's an unusual title.

Q Did they say anything?

A Not to my knowledge.

Q Do you happen to remember what type of arrangement of Ya Ya was played?

A To my mind obviously in the rock idiom. Beyond that, no.

Q Was Mr. Seider at the Record Plant with you that afternoon?

A I don t think he was that afternoon, no.

Q Had you told Mr. Seider when you arrived at the Plaza Hotel that you were going to the Record Plant to see John Lennon?

A I probably did mention it, yes.

Q Did you invite him to come along?

A It wasn't up to me to invite Mr. Seider. He was far closer to Mr. Lennon than I was.

Q What was the purpose of your visit to the Record Plant?

A To say hello to John primarily.

Q Was the purpose to report to him what had happened in Los Angeles?

A A little of both.

Q And was it your understanding that you and Mr. Seider would deliver separate reports to him?

THE COURT: I have to ask that we make some time.

MR. SCHURTMAN: I am trying, your Honor.

THE COURT: I am not a prisoner of the lawyers on their leisurely examination. I can do something. Now, there must be a point that you are bringing out.

MR. SCHURTMAN: I am.

THE COURT: If you can give it without every single bit of obvious detail that I already know, please let us get going.

MR. SCHURTMAN: I assure you my questions have a point but I don't want to tell the witness what the point is.

THE COURT: Of course you don't, but it is so

leisurely.

MR. SCHURTMAN: I will look at my notes and maybe I can move it along faster.

THE COURT: Please do.

Q During the evening at Club Cavallero, and I am referring to the evening of October 8th, did you participate in the conversation in any way except for your conversation with Mr. Cahl about the watch?

THE COURT: When you say participate, do you mean talk, listen or both?

Q Did you say anything in the course of that conversation that you say lasted two to two and a half hours?

A I wasn't involved in the discussion but there were certain aspects I can recall. When rock and roll generally was being discussed and each of us were throwing out rock standard songs that we knew in the rock and roll idiom.

Q Do you mean you were discussing titles of songs?

A Yes, just recalling various great rock and roll songs.

Q In what context were you recalling titles of songs? How did that come up?

A Because we had been discussing what had proved to be a rock and roll thing that John had done with Phil Spector.

Q Were you discussing the titles of the Spector tapes or other songs?

A They were mentioned first and then -- everybody was just coming in, yes, that's a great rock and it developed on those lines. We were just talking rock music.

Q Did anyone give any reason for throwing titles back and forth?

A I think one was to have a reason when you are discussing rock. It is an inevitable thing that titles get thrown out.

THE COURT: Mr. Brown, he is just asking you did anyone say why they were discussing rock titles. Did anyone say such a thing?

THE WITNESS: The general conversation at that time was on rock music.

Q You had testified on your direct examination at one point Mr. Levy explained, and you used the word "explained" television promotions. Do you recall that?

A I do.

Q What specifically did Mr. Levy say?

A He explained how rather than the normal

marketing process the promotion for certain records was put on with television promotion. I recall John saying yes, he had seen this type on television and then following it up with other campaigns.

Q Did Mr. Levy say anything else about the mechanics of a TV promotion at any time that evening?

A He may have gone into more detail. If he did, I can't recall what it was.

Q Did May Pang say anything that evening?

A I don't think she entered into the general conversation. We were more listening than talking. She again got involved when we were discussing the rock music and I think came up with one or two specific titles.

Q Who was doing most of the talking?

A I would think Morris Levy and John Lennon.

Q Did Harold Seider say very much?

A He was in the discussion, maybe not equally but certainly to a large extent.

Q Have you told us everything that you recall Mr. Seider saying?

A I think so. I can't recallobviously his every word but I think I have said all the things I can remember.

Q Was there any discussion about Lennon recording

any further rock and roll songs to add to the Spector tapes?

A Not to my knowledge. I recall, I think it was Mr. Cahl saying"We have got loads of rock and roll, we got a great rock catalog, you would have to listen to some of those."

Q I believe you testified on your direct that Mr. Lennon said that he thought he could salvage six of the Spector songs? Did I understand you correctly?

A Yes.

Q And I believe you testified he said he would take those six tapes or songs to Capitol in California to see how they cure merchandise?

A That is correct.

Q After they started discussing the question of TV promotions was anything said about using the spector tapes on TV promotions?

A I think this was part of the thing that Mr. Levy brought up. He had asked them or John Lennon had asked regarding his EMI agreement and Mr. Levy said "Nevertheless, this is what we do" and he went ahead to explain the TV campaign that he normally put on.

Q Did you hear anything said how many songs are normally put on an album for TV promotion?

A I don't specifically recall it, no.

Q Did anyone say that six Spector tapes wouldn't be enough to fill such an album or words to that effect?

A No, that had been discussed previous to even arriving at the Cavallero between John and myself by John saying six is an unusual package, Capitol has to make it either a mini LP or a maxi AP.

Q Once Mr. Levy brought up the subject of TV promotion was anything said about Mr. Lennon recording additional name songs to add to the Spector songs?

A I can't recall any such comment, no.

Q Was there any discussion about how long a TV promotion would take?

A I don't specifically remember it.

Q Was there any discussion about how long licensing of masters run in this field?

A No.

Q In connection with that watch that you mentioned, do you still have that watch?

A I do.

Q Do you have it with you?

A I do.

Q Do you have it right here?

A Yes.

MR. SCHURTMAN: Your Honor, may I just take

a look at it?

THE COURT: Sure.

MR. SCHURTMAN: Could I have my associate look at it while I continue my questions?

THE COURT: Yes.

BY MR. SCHURTMAN:

Q You testified when you got back to England your watch didn't work.

A That is correct.

Q Then you sent the watch to Philadelphia?

A That is correct.

Q To Benrus?

A Yes.

Q They sent it back to you and said it wasn't their watch?

A That is correct.

Q Do you remember when you mailed it to Benrus in Philadelphia?

A I would have thought this was January, possibly February 1975.

Q When did the watch stop functioning?

A Very shortly after my arrival in England.

Q I think you testified that you left New York on October 10th.

A Correct.

Q When was the next time you were in New York?

A July 1975.

Q You also testified in connection with the October 8th conversation that Mr. Lennon said to Mr.Levy that he would let him listen to some Spector tapes that he thought were very bad.

A Yes.

Q In what context did he say that? Why would Mr. Levy want to listen to bad Spector tapes?

A I think the inference was they were Mr. Levy's songs on those tapes.

Q Did he actually say that or was this an inference that you drew?

A To be honest, I think it was an inference in the manner in which it was said.

Q Can you remember the words that Mr. Lennon used?

A I can only recall my memory of what was said and I wouldn't guarantee that that was specific but it was something along the lines "You are quite welcome, Morris, to come along to the Record Plant and listen to everything that I have from Spector."

Q When you were at the Record Plant the next day,

were all of the Spector tapes played?

A They might have been, but I didn't hear all of them.

Q Which ones did you hear the next day?

A As far as the titles are concerned I am not that certain. Music was being played which I presume were the Spector tapes but it was certainly rock music that was being played. I would not specify titles. I don't recall any to be honest.

Q When was the first time you learned that there was a dispute between Mr. Levy and Mr. Lennon involving what had happened on October 8th?

A In April 1975.

Q How did you learn about that?

A I had a call from one of the legal gentlemen I know at EMI in London, Mr. Malcolm Brown who said he had Mr. Barrett Prettyman with him from the USA who would like to come to see me at my office.

Q You were still employed by the Apple organization at that time?

A Correct.

Q Did you meet with Mr. Prettyman?

A I did meet with Mr. Prettyman.

Q What did Mr. Prettyman discuss with you?

A Mr. Prettyman referred to my meeting with John and specifically to the evening of October 8th, and said would I give him in my own words precisely my idea what happened on that evening.

Q Did Mr. Prettyman specify that the meeting had taken place on October 8th?

A To the best of my knowledge, yes.

Q Did he tell you anything about that meeting?

A No, he didn't tell me. He asked me.

Q Did you give Mr. Prettyman a written statement at that time?

A I did.

Q When was the last time you looked at that statement?

A I think it was in the course of Mr. Diamond taking my deposition.

Q You haven't seen it since?

A I have not.

Q I show you Plaintiffs' Exhibit 85 for identification. Can you identify this?

A Yes.

Q Is this the statement that you gave to Mr. Prettyman in April of 1975?

A That's correct.

Q The copy that I have is not signed by you, Mr. Brown. Did you sign one of these statements?

THE COURT: Can we get that marked?

MR. PRETTYMAN: We have one I believe that was signed and I was going to mark it in rebuttal. I will get it. This was going to be Defendants' Exhibit M for identification. Do you want to remark it?

MR.SCHURTMAN: Let us mark that as Plaintiffs' Exhibit 85.

(Plaintiffs' Exhibit 85 was marked for identification.)

MR.SCHURTMAN: I offer that.

MR. PRETTYMAN: Can we take a moment for your Honor to read it, please. He has just offered it. I have no objection.

THE COURT: I will receive it.

(Plaintiffs' Exhibit 85 was received in evidence.)

THE COURT: All right, Mr. Schurtman.

BY MR. SCHURTMAN:

Q Did you ever have occasion to discuss this lawsuit with Mr. Lennon?

A I am sorry, will you repeat the question?

(Question read.)

A At what period?

Q Any period.

A Obviously I have discussed it certainly since my arrival in New York this time, yes.

Q And did you discuss it with him before then?

A No, sir.

Q When did you discuss any phase of this lawsuit with Mr. Lennon for the first time?

A Since my arrival in New York this week, either yesterday or Wednesday.

Q What did he tell you about the case?

A Nothing specific, as I can recall. It was just a general discussion as to what the progress is. I think there was a certain amount of concern as I believe you are aware, I am due back in London fairly shortly, a concern as to how soon I would be heard to be able to get away.

Q Mr. Brown, were you at the trial the first day before Judge Mac Mahon?

A No, I was not.

Q When did you first start attending these trial sessions?

A On Wednesday morning.

Q And did you hear Mr. Levy's testimony?

A I did, yes.

Q Did you hear all of his testimony?

A I think so because Mr. Levy was still on the stand when I left last evening. I don't know whether he was recalled this morning. I was unable to be here first thing this morning. Whether I heard all of it, I can't answer you.

Q Did you ever discuss this lawsuit with Mr. Seider?

A Yes.

Q When did you discuss it with him for the first time?

A Again, I think probably at the same time I discussed it with John, either Wednesday or Thursday.

Q Never before then?

A No.

Q How about Miss May Pang?

A No.

Q You never discussed it at all with May Pang?

A No, I haven't seen May Pang.

Q When was the last time you saw May Pang?

A In London, but I can't be specific as to dates. She came to London. I think she was there for Christmas

if I remember rightly.

Q Christmas of what year?

A December '74.

Q And did you discuss any aspect of the Cavallero meeting, the October 8th meeting with Miss May Pang at that time?

A Certainly not.

Q Was there any discussion about dealings between Mr. Lennon and Mr. Levy?

A No.

MR. SCHURTMAN: Let me return your watch, Mr. Brown.

THE WITNESS: Thank you.

Q Mr. Brown, let me read to you two or three answers from page 45 of the deposition that was taken of you, not by my office but by Capitol Records and EMI. I believe the attorney conducting the questioning was Mr. Prettyman.

"Q Do you recall any discussion that evening"-- the reference being to October 8th -- "concerning the use of old rock and roll songs for the production of an album other than that which you have testified to so far?

"A I believe in the context of this thing that some, Morris Levy at that time probably this could be the reason why he offered the records. He said 'We could

make a great package of this' and that was probably when he offered to supply the old rock and roll records that he had.

"Q It was your understanding that Mr. Levy was offering to supply old rock and roll songs to Mr. Lennon, is that correct?

"A Yes. He definitely offered that he could have those records."

Does that refresh your recollection that when titles were being passed back and forth it was in the context of this package?

MR. PRETTYMAN: What package, your Honor?

THE COURT: I guess the package that Mr. Levy was proposing. Isn't that what you are talking about, Mr. Schurtman?

MR. SCHURTMAN: I am trying to remember if the word "package" was used here. Yes "Mr. Levy said we could make a great package of this."

Was it said in the contents of the discussion concerning this package?

A It could have been. I can't remember the chronological order whether we talked about rock titles first and that came after or in reverse. I can't recall.

Q You testified on your direct that you saw figures being written down and figures being discussed con-

cerning sales.

A Yes.

Q Do you have any specific recollection of what sales were discussed, what figures?

A Not specific, no. I can remember figures being mentioned but quite honestly, I paid no attention to them.

Q Did anyone say in words or substance that this package would sell millions of records?

A It could well have been said but I didn't pay any attention if it was said.

MR. SCHURTMAN: I have no further questions.

THE COURT: Any further questions of Mr. Brown?

MR. BERGEN: No, your Honor.

MR. PRETTYMAN: I have a few questions.

THE COURT: Do the other defense lawyers want to question Mr. Brown?

MR. GRUMBACH: I have no questions.

REDIRECT EXAMINATION

BY MR. PRETTYMAN:

Q Do you have with you the return book of Benrus saying it wasn't their watch?

A Yes, I do.

MR. PRETTYMAN: No further questions.

MR.SCHURTMAN: May I see that card?

THE COURT: Would you show it to Mr. Schurtman.

MR. SCHURTMAN: I have no questions.

THE COURT: You may step down.

(Witness excused.)

THE COURT: I suppose the next order is to continue with the cross examination of Mr. Levy. Let us go with that for a few minutes and see how far we get.

M O R R I S L E V Y, resumed.

CROSS EXAMINATION (Continued)

BY MR. BERGEN:

Q Mr. Levy, just to pick up where we left off before lunch.

I take it you didn't look at any of Mr. Lennon's contracts with EMI or Capitol before October 8th?

A No, sir.

Q Now, before you met with Mr. Lennon and Mr. Seider at the Club Cavallero that night, October 8th, you haven't thought of any particular deal that you were going to propose to Mr. Lennon and Mr. Seider about this alleged breach of the come together settlement, had you?

A No, sir.

Q This thing about the television just kind of came up during the course of the meeting?

A Yes, sir.

Q After the meeting did you consult a lawyer about what happened at the meeting?

A I didn't consult in that sense. I told Mr. Krasilovsky,who was the attorney in the copyright action, that it was all settled, and not to pursue it any further and that's it. I don't believe I consulted a lawyer.

Q Did you write a memo of understanding at all of what took place that night?

A No, sir.

Q Did you send any memo to your files?

A No, sir.

Q Did you make any notes of the meeting?

A No, sir.

Q Up to January 30, 1975, when you met with Mr. Seider, did you ever look at the contracts, EMI --

A I missed the date.

Q January 30, 1975.

A No, sir.

MR. SCHURTMAN: I object to the form, your Honor. "Look" would indicate contracts were accessible to Mr. Levy.

THE COURT: It doesn't indicate that at all. There is nothing wrong with the question. Go ahead.

Q Up to that time had you ever asked a lawyer

to look at these contracts?

A I didn't have one.

THE COURT: The answer is no?

THE WITNESS: That is correct, yes.

Q Did you make any investigation to determine precisely what the contractual rights were in regard to Mr. Lennon's recorded performances up to January 1975?

A I discussed it with -- I knew what I knew about the old package I was making for Alan Klein that the mail order rights were excluded --

THE COURT: Let us not repeat. If Mr. Bergen is getting at what I think he is asking about, he is asking about whether you made any investigation, meaning did you inquire in any special way to find out the terms of these contracts.

THE WITNESS: No, sir.

MR. BERGEN: I am not sure I got an answer to that question.

THE COURT: He said no.

Q Did you, or did you have any lawyer call Capitol or EMI --

THE COURT: Mr. Bergen, why do we have to hear the same thing fifteen different ways? I am positive that if anybody on Mr. Levy's behalf had looked at the

contracts or inquired, I would have heard about it a long time ago.

Q Mr. Levy, when was the first time you saw the contracts, the EMI John Lennon contracts?

A I believe it was after the lawsuit was started.

Q Was that after the defendants had produced those contracts to your lawyers?

A Yes. I told my lawyer what I thought was in them.

THE COURT: You don't have to --

THE WITNESS: I am sorry, your Honor. Yes.

MR. BERGEN: Your Honor, the followup to the discussion we had just before lunch. I think this might be a good place to break cross examination of Mr. Levy since it is 4:30 and the defendants may have a proposal on Tuesday when we gather again to try to speed things up, if we could just have the weekend to discuss it.

THE COURT: Are you finished with Mr. Levy's cross examination.

MR. BERGEN: No. This is a good point rather than going into something else, since it is 4:30.

MR. PRETTYMAN: Our proposal may relate to deferring the remainder of his cross examination.

THE COURT: That is fine. It is a good time to break. Sorry we couldn't have heard any music this week. The only suspense I will have is when you will settle the case between now and Tuesday morning so I won't hear any of this music.

MR. GRUMBACH: Your Honor, there is something I would just like to mention. I don't know if you have had a chance yet or will have a chance before Tuesday, but I would like to suggest to your Honor the pretrial briefs and suggested statements of fact both disputed and undisputed were submitted to Judge Mac Mahon. If you are not aware of that because there may be a stack of papers I just wanted to call that to your attention.

THE COURT: There is an immense time. Even now I have not read all of that, although I have had this leisure for the last couple of days. Certainly we have gone over the briefs. The briefs are short. Is there anything in this other material that you feel would be specifically --

MR. GRUMBACH: I think, your Honor, if you would look at the defendants joint statements of facts, the amended version, and we put in a few changes at the end which supersede the first version, I think it would be helpful, your Honor. The plaintiffs have put in a much shorter version themselves. I think it would be of help to you.

MR. BERGEN: There is an amended one.

THE COURT: The trouble is, I am now trying the facts. It seems to me I am in a little difficult position than Judge Mac Mahon was. I don't mean to quibble with you --

MR. GRUMBACH: I would suggest your Honor simply regard it as an opening statement.

THE COURT: I thought I would exercise some care, since I am the finder of the fact, and I don't want to have rolling around in my mind a lot of stuff which may be things I learned outside the record and may be things I learned in the record.

MR. GRUMBACH: Your Honor, may I suggest that our proposed statement is in legal theory, no different than if it were part of our statement of fact in our pre-trial brief. It is in the record. It is on file with this Court. So is the plaintiffs and I have no objection to your reading theirs. I think it is no different legally I suggest than an opening statement.

MR. SCHURTMAN: I honestly don't think it would be helpful to you at this point because the defendants' so-called undisputed statement of facts gives the whole chronology and at the tail end it tells you which numbers are disputed. I had trouble reading it myself.

THE COURT: Mr. Grumbach, I know you are trying to be helpful, but frankly, as far as the evidence in the case, I think the thing for me to do is to hear the proof. I will sort of look those things over but I do want to tell you that I want to be careful that I am not gathering facts and factual impressions outside the record. There is an awfu_ lot of material in there so I will be careful on that. Anything you have to propose to us will be well and good.

Thank you very much.

(Adjourned to Tuesday, January 20, 1976, at 10:00 a.m.)

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BIG SEVEN MUSIC CORPORATION
et al.

vs. 75 Civ. 1116

JOHN LENNON, et al.

January 20, 1976
10:45 a.m.

(Trial resumed. In open court.)

THE COURT: Someone said there was going to be a proposal, you were talking about something --

MR. BERGEN: Yes, your Honor.

The defendants have a proposal that I passed on to Mr. Schurtman. We at the time would be willing to defer for the time being, further cross examination of Mr. Levy.

I asked Mr. Schurtman if we could put on or if he could put on the direct testimony, deferring his cross examination also, of Mr. Cahl, who is the other officer of Big Seven, who was at this meeting on October 8, and then we would put on two of the musicians who were at the farm for direct and cross examination and then start right in with Mr. Lennon and Mr. Seider.

THE COURT: You are a mind reader. That is exactly what I think ought to be done.

MR. BERGEN: The problem is Mr. Schurtman told me that Mr. Cahl is not available and they don't know where

he is.

MR. SCHURTMAN: I didn't say we don't know where he is.

THE COURT: The best thing to do in this case would be to go right around that table, get the participants at that meeting.

I think Mr. Bergen is exactly right, that this is exactly the way we ought to proceed, and I think it will bring the fastest, clearest light to the case.

So if you don't have Mr. Cahl, let's go on to these other gentlemen.

MR. SCHURTMAN: Your Honor, the problem with Mr. Cahl is, as I told you last week, his brother had a massive heart attack. He went down to Florida. Since that time further disasters have happened.

A second brother is in the hospital now with another serios illness and Mr.Cahl's father-in-law just came down with a heart attack -- I am sorry -- a stroke, also in Florida.

It has all happened at the same time. We hope to get him back later this week.

THE COURT: All right.

In the meantime, what I have is the plaintiffs' position by way of the very detailed testimony of Mr. Levy

as to what went on at the -- what he says went on at the Club Cavallero and so forth.

It would be, I think, almost ideal to take Mr. Bergen's suggestion on its precise terms, and that is have the other witness from the plaintiffs' side, Mr. Cahl, and then go around the table, so to speak.

If Mr. Cahl isn't available, we will hear him later in the week. But can't we go ahead with the rest of that plan?

MR. SCHURTMAN: I am perfectly in agreement.

THE COURT: Fine.

I think we are all on the same wave length.

MR. BERGEN: Your Honor, the reason we are going to have the two musicians is one of them comes from New Hampshire and the other one comes from California.

THE COURT: No problem. That's great.

All right.

Would you proceed then.

MR. BERGEN: Edward Mottau, please.

E D W A R D S T A N T O N M O T T A U, called as a witness on behalf of the defendants Lennon and Seider, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. BERGEN:

Q Mr. Mottau, would you state your name and address for the record, please.

A My name is Edward Mottau. I live in Lyndedboro, New Hampshire.

Q Would you tell the Court what your profession is, Mr. Mottau?

A I am a musician.

Q What instrument do you play?

A Guitar.

Q How long have you been a professional musician?

A For about ten years.

Q Have you ever made any record albums on your own?

A Yes.

Q Can you tell us what record companies you have made albums for?

A Septer Records, Atlantic Records, Bell Records and MCA Records.

Q Have these been records you have made as a solo artist and with groups?

A Yes.

Q Have you ever produced any record album?

A Yes.

Q For whom have you produced record albums?

A I produced two albums for Warner Brothers, for Mr. Paul Stookey.

Q Can you identify Mr. Stookey for the Court, please.

A Yes.

Mr. Stookey is one of the former members of a group called Peter, Paul and Mary.

Q As a performer, an artist and as a producer, are you familiar with the recording business from start to finish?

A Yes.

Q Can you tell us what speed tape a record is normally made from by a major recording artist?

A A speed of 15 IPS.

Q Have you ever heard of an album being made by a major recording artist from a 7-1/2 IPS tape?

A No.

Q Is there a difference between a 7-1/2 IPS tape and a 15 IPS tape?

A Yes.

Q Can you tell us what that difference is.

A Well, the difference is in speed, speed of the

tape. A 7-1/2 tape is used primarily for reference listening and the quality is not as good as the 15 inch per second.

Q What is the difference in the quality between the 7-1/2 and the 15?

A Well, the hiss level is outstanding in a 7-1/2 tape.

Q And you don't get that hiss level on a 15?

A No.

Q You said it is primarily used or the 7-1/2's are primarily used for reference purposes.

Can you tell us what you mean by "reference purposes"?

A Well, it is -- usually you take a 7-1/2 inch tape home to listen to to check out the information that you have on the other tape.

In other words, it is just a copy.

Q Can you tell the Court what a lacquer master is?

A A lacquer master is made from the 15 inch tape and then is sent off to the factory, where they make what they call mothers, the metal parts that are then turned into stampers to make the record.

THE COURT: A lacquer master is made from the tape, right?

THE WITNESS: Right.

THE COURT: And then you use the lacquer master to make a mother.

THE WITNESS: Right.

THE COURT: And a mother is --

THE WITNESS: It is the metal part. The laquer is a piece of plastic and they make metal parts from that.

THE COURT: When you say "metal part", what is it?

THE WITNESS: It is a record made out of metal.

THE COURT: All right, go ahead.

Q Do you know John Lennon?

A Yes, I do.

Q How long have you known Mr. Lennon?

A I believe since around 1971.

Q When did you first work with John Lennon as a musician?

A I believe it was in December of 1971.

Q Can you tell me what album that was on?

A Yes, I think -- as I recall, that was an album by a fellow by the name of David Peel.

Q Was Mr. Lennon producing that album for Mr. Peel?

A Yes.

THE COURT: Was David Peel the composer or what?

THE WITNESS: [illegible], artist, composer.

Q Mr. Peel was the artist who was performing on the record?

A Yes.

THE COURT: What did Mr. Lennon have to do with it then?

THE WITNESS: He was producing the album.

Q When was the next time that you worked with Mr. Lennon as a musician?

A It was the summer of '74, I believe.

Q Was that on a record album?

A Yes.

Q What was the name of that album?

A Walls and Bridges.

Q Do you know what record company Mr. Lennon records for?

A Yes. EMI.

Q When was the next time that you worked with Mr. Lennon on a record album after Walls and Bridges in the summer of '74?

A I believe it was October of '74.

Q Was this on the rock and roll album?

A Yes.

Q How were you first contacted about working on the rock and roll album with Mr. Lennon?

A A young lady by the name of May Pang called me on the telephone.

Q Did she ask about your availability to work on the album?

A Yes.

Q Do you recall when the actual recording sessions were for the rock and roll album?

A I believe they started on October 21.

Q How long before October 21 did May Pang call you and ask about your availability to work on the album?

A Approximately two, two and a half weeks.

Q Did you later get a call from May Pang about some rehearsals for the album?

A Yes.

Q Do you recall when that was?

A Several days before the scheduled recording was to go down.

Q Did she tell you where the rehearsals were going to be held?

A No.

Q Did she call you back at a later time and tell you where the rehearsals were going to be held?

A No.

She just said to come down so that we could rehearse for the album.

Q Did you meet Mr. Lennon and May Pang someplace prior to these rehearsals?

A Yes, I did. I met them at Mr. Lennon's home.

Q And did you learn there where the rehearsals were going to be?

A Yes.

Q Do you recall what day that was?

A I believe that was on a Thursday.

Q The Thursday before the rehearsals?

A Yes.

Q Which I believe would be October 17.

Now, when you met Mr. Lennon and May Pang, did they tell you where the rehearsals were going to be?

A They said that we were going -- driving up to a farm or something.

Q Did they tell you whose farm it was?

A Yes.

Q Whose farm was it?

A Morris Levy's.

Q Did you know at the time who Morris Levy was?

A Yes, I had heard his name mentioned several

times to me in the period of ten years or so. I didn't-- I have never met the man, I'd never met him before that time.

Q Did you ask May Pang or John Lennon why you were going to Morris Levy's farm?

A No.

Q How did you get to the farm?

A Drove up with Mr. Levy.

Q And Mr. Lennon and May Pang?

A Yes.

Q Was that in Mr. Levy's car?

A Yes.

Q What kind of a car was that?

A I believe it was a black Cadillac.

Q On the way up in the car --

THE COURT: You went up in whose car?

THE WITNESS: Mr. Levy's car.

THE COURT: Who else -- I guess you said -- who else was in the car?

THE WITNESS: May Pang and John Lennon.

THE COURT: Levy, yourself, May Pang and Mr. Lennon?

THE WITNESS: Right.

Q Can you tell us where the four people who were

in the car were sitting?

A John, May and Morris were sitting in the front seat and I was in the back seat.

Q Before you were picked up by Mr. Levy, did either John Lennon or May Pang say that John Lennon was doing a record album for Morris Levy?

A No.

Q Was there any discussion about an album, a record album, in the car going up to the farm?

A No.

Q Was there any mention in the car that John Lennon was doing an album for Morris Levy?

A No.

Q Were you the first of the musicians to arrive at the farm?

A Yes.

Q During the course of the weekend, did you talk to Morris Levy?

A Yes, I did.

Q Can you tell us when those occasions arose?

A Well, we talked -- I was the first one up every morning and I sat with Mr. Levy at the breakfast table talking.

He took me on a slight tour of his farm and we

talked at the dinner table.

Q Excuse me.

A We talked -- we spoke at the dinner table.

Q At any time during the weekend, did Morris Levy tell you that John Lennon was doing an album for him?

A No.

Q Or for any of his companies?

A No.

Q Have you ever heard the name Adam VIII, Ltd?

A No.

Q Did you hear it that weekend?

A No.

Q How about Big Seven Music Corporation; have you ever heard of that company?

A No.

Q Did you and the musicians rehearse during the course of the weekend?

A Yes.

Q What kinds of songs were being rehearsed?

A Early rock and roll songs from the fifties.

Q Can you tell us approximately how many hours during the course of the weekend you and the musicians and Mr. Lennon rehearsed?

A It was no more than a couple of hours during the

entire weekend.

Q Was there any rehearsal at all on Sunday?

A No.

Q What time did you leave the farm on Sunday?

A We left after lunch, approximately 2 o'clock.

Q During the course of the weekend, did everybody more or less eat their meals at the same table?

A Yes.

Q Can you describe the table and how big it was?

A It was a large round dining table. I would say it would seat approximately 15 to 18 people.

Q How far away was everybody from each other around this table?

In other words, how wide was the table?

A Oh, no more than four or five feet, I would say.

Q During the course of any of the meals at the farm, did you overhear or did you partake in any discussion about John Lennon doing a record album for Morris Levy?

A No.

Q Did you hear any discussion about a price of a record album?

A No.

Q Did you at any time during the weekend hear

Mr. Lennon say, and I quote, "We are making this package for Morris, it is going to be a unique package, it's never been done before, it is an exciting project."

A No.

Q At any time during the weekend, did you hear any of the musicians, including yourself, say "What's this package going to sell for," and hear Morris Levy respond "$4.98," and then have the musicians say "That's ridiculous, that's too cheap for how good this is."

A No.

Q Did you ever hear Morris Levy during the course of that weekend explain to you or any of the other musicians how on TV a record has to be sold cheaper because you have got to get the people to write a check and mail it in and it takes an effort on their part and it has to be a great price?

A No.

Q During the course of the weekend or at any time thereafter, did John Lennon ever tell you that he was making a record album for Morris Levy?

A No.

Q Did May Pang ever tell you that?

A No.

Q Did you ever hear any of the musicians say that?

A No.

Q During the course of the weekend, did you have any discussion with Mr. Lennon about how the album was going to be marketed?

A Yes. He said to me -- we were sitting on the couch together when we first arrived at the farm.

He said to me "I am going to try and sell this album through the media, but I don't think the record company will go for it."

Q Did Mr. Lennon elaborate on that at all?

A No.

Q Was there any further discussion?

A No.

Q You testified before that you started the recording sessions on rock and roll you believe on October 21, 1974.

Do you know when they were completed, the actual recording sessions?

A Well, we were through recording, I believe, on Friday of that week.

Q At any time during the recording sessions was Morris Levy present?

A No.

Q Do you know Phil Cahl?

A Yes.

Q And at any time during the recording sessions was Mr. Cahl present?

A No.

Q Were there any discussions during the recording sessions about how the album was going to be marketed?

A No.

MR. BERGEN: Your witness.

xx CROSS EXAMINATION

BY MR. SCHURTMAN:

Q Mr. Mottau, do you know what this case is all about?

A No.

Q You have no idea who is suing whom for what?

A Yes, I heard that Mr. Levy is suing Mr. Lennon.

Q Do you know why he is suing him?

A No.

Q Did anyone discuss the nature of this case with you?

A No.

Q Have you ever discussed any aspect of this case with John Lennon?

A No.

Q Never?

A No, never.

Q Did you see Mr. Lennon this morning?

A Yes.

Q You came up in the elevator with him, didn't you?

A Yes.

Q And you didn't discuss the case with him?

A No.

Q Have you ever discussed this case with May Pang?

A No.

Q Have you discussed it with Harold Seider?

A I don't even know who that is.

Q Have you discussed it with any lawyers?

A No.

Q Are you telling the Court that you have never spoken to any lawyers about this case?

A Yes, I spoke to Mr. Bergen.

Q So you did discuss it with Mr. Bergen?

A No, he did not discuss the case with me.

Q Maybe you don't know what the word "discuss" means the way I use it.

Did you have a conversation with Mr. Bergen about this case?

A Yes.

Q All right.

When did you have that conversation?

A I believe on Monday, when I came to New York.

Q And where did you have that conversation?

A In a restaurant.

Q Which restaurant?

A I don't know the name of the restaurant.

Q Who else was present?

A There was another attorney there, another associate of Mr. Bergen's.

Q Do you know his name?

A No.

Q Is he in Court today?

A Yes, he is.

Q Can you point him out?

A The gentleman to your left.

MR. SCHURTMAN: Would you identify yourself, please?

MR. ROY: Your Honor, Howard Roy.

THE COURT: All right, Mr. Roy.

Q Was anyone else present at that meeting?

A No.

Q Tell the Court who said what at that dinner

conversation.

A I just asked what was going on and they said "Well, John is being sued by Mr. Levy," and that was the end of it.

They wouldn't, you know, go into it any further than that.

(Continued on page 575.)

Q Did they ask you what had happened at the farm?

A I beg your pardon?

Q Did they ask you what had happened at the farm?

A Yes.

Q And you told them?

A Yes.

Q What did you tell them?

A Just that we were rehearsing and eating and drinking and having a good time.

Q Did they tell you anything that happened at the farm?

A No.

Q Did they tell you what Mr. Lennon had said about the farm?

A No.

Q Did they tell you what Mr. Levy had said?

A No.

Q Did you have any other meetings with any lawyer, any conversations with any lawyer?

A Yes, I had a meeting with Mr. Bergen.

Q Aside from that dinner meeting?

A Yes.

Q When did you meet with him?

A Yesterday afternoon.

Q Where did you meet?

A In his office.

Q Who was present?

A Just myself.

Q And what did you talk about?

A We talked about what had happened at the farm.

Q Did he say anything?

A He just asked me some questions. That is all.

Q Did you ever give any written statement to anyone?

A No.

Q Did you sign an affidavit?

A No.

Q Did he take notes from you while you were talking tohim?

A No.

Q Did he take notes during the dinner conversation?

A No.

Q Have you spoken to any other lawyers about this case?

A No.

Q When you first learned that you were going to rehearse up at the farm, did you express any surprise?

A No.

Q Was it customary to conduct rehearsals at the farm?

A Well, it is customary to conduct rehearsals. It does not matter where they take place.

Q Have you ever conducted rehearsals at the farm before or the country house or anything similar?

A Yes.

Q When?

A I have conducted rehearsals at my farm house.

Q In New Hampshire?

A Yes.

Q Now, did you ask Mr. Lennon or May Pang or anyone else what you are supposed to be rehearsing?

A I was told it was an old rock and roll album.

Q Did the name Phil Spector come up?

A Yes.

Q Would you tell us who said what about Phil Spector?

A I believe Mr. Lennon told me that he was finishing up an album that he started to record with

Phil Spector a few years before, that is, in Los Angeles.

Q Did he make any comments about what had happened to the original Spector production?

A Yes.

Q Did you ask him what songs were going to be recorded?

A No, I don't believe so.

Q When you got to the farm where did the rehearsals take place?

A In a large living room.

Q How many musicians were there?

A There were five musicians.

Q What instruments were used?

A Guitars, base drums.

Q Was a piano used?

A Yes, a couple of times, I believe.

Q How many songs did you rehearse?

A I don't remember how many songs we rehearsed. We did not rehearse very many.

Q More than a half dozen songs?

A No.

Q You rehearsed less than a half dozen songs?

A I really can't answer that question. I can't remember how many songs we rehearsed.

Q Do you remember the titles of the songs you rehearsed?

A Yes, I think one was a song called Be-Bop-A-Lula.

Q You can't remember any other songs?

A No, I can't remember any other songs.

Q Were they the same songs that you ultimately recorded?

A Yes.

Q Do you remember the titles of any other songs you recorded?

A Just that one comes to mind.

Q That is the one you remember?

A No, there was a Buddy Holly song. I can't remember the name of the song.

Q You remember no other titles?

A No.

Q During the rehearsals did you use sheet music?

A No.

Q Nobody used sheet music?

A No.

Q Do you know what a lead sheet is?

A Yes.

Q Did anyone use a lead sheet?

A No.

Q How did you know what the tunes were?

A They were all old songs from the '50s that everybody knew, all the musicians knew the songs from the time they were children.

Q Who suggested which songs should be rehearsed?

A John did.

Q In other words, John would start a song and everybody would join in?

A Yes.

Q Were any recordings made at the farm?

A No.

Q Was a cassette used?

A Yes, I think we used a cassette a couple of times during the rehearsals just for reference, to listen back.

Q Were riff s recorded? Do you know what a riff is?

A You mean jamming?

Q Yes.

A Yes.

Q Now, when Mr. Bergen questioned you, you testified that during the entire weekend you rehearsed only a couple of hours? Is that correct?

A Yes.

Q When did you rehearse those couple of hours?

A I believe Friday night we played for a time and Saturday night.

Q And that was the only time you rehearsed?

A That is all, yes.

Q Let me read you certain questions and answers and tell me if the person who said this was incorrect:

"Q Could you tell us approximately how long you rehearsed that weekend?"

MR. PRETTYMAN: May I inquire what he is reading from?

MR.SCHURTMAN: I don't think I have to tell at this point.

MR. PRETTYMAN: It is not his testimony.

MR. SCHURTMAN: No.

THE COURT: It is somebody else's testimony at this trial?

MR. SCHURTMAN: Yes. I would first like him to answer it.

THE COURT: Go ahead.

Q "Q Could you tell us approximately how long you rehearsed that weekend?

"A Well, in terms of hours, I can't tell you,

but say we got up in the morning, whatever time may be, 10 or 11 in the morning, we would eat breakfast, then go in this sort of space that we had got to rehearse in and rehearse until dinner -- until lunch time, and then everybody would eat lunch and then usually we would go back after we digested it again until it went dark. So I would say it was 3 or 4 hours, a couple of hours in the morning and a couple of hours in the afternoon with many jams in between, after and later."

MR. BERGEN: That is not from this trial?

THE COURT: I asked you if it was from this trial and you said yes.

MR. SCHURTMAN: It is deposition testimony, your Honor.

THE COURT: All right.

Q "Q Did you play at all in the evening?

"A Yes. I mean we did rehearse at night as well. It was pretty vague but we were playingall the time when we weren't eating. We did play billiards and things like that in between, but it was generally work."

Would you say that the person who gave that testimony was mistaken?

MR. PRETTYMAN: May I note my objection?

MR. BERGEN: Mine, too.

THE COURT: I will overrule it.

THE WITNESS: Would I say that this testimony is wrong?

THE COURT: I don't think this is a fair question. You are asking him an opinion about whether that person is wrong, not saying who it is.

MR. SCHURTMAN: That is fair enough.

BY MR. SCHURTMAN:

Q Mr. Mottau, this is the testimony of John Lennon describing what happened at the farm?

MR. BERGEN: May we have the page numbers?

MR. SCHURTMAN: Yes, page 68 and 69.

Q Now that you have heard Mr. Lennon's testimony, does that refresh your recollection as to how long you rehearsed that weekend?

A No, it did not seem to me more than a couple of hours the entire weekeend that we rehearsed.

THE COURT: What do you mean when you say jams?

THE WITNESS: Just playing music together, trading riffs back and forth.

THE COURT: What is a riff?

THE WITNESS: Notes being played on instruments.

THE COURT: Go ahead, Mr. Schurtman.

Q Now, Mr. Mottau, you testified when Mr. Bergen questioned you and that the only time the subject of this particular album that was being made came up was when John Lennon told you he would try to sell it through the media?

A Yes.

Q But he was not sure that his company would permit him to do it --

I am sorry, I don't have the transcripts of your testimony. Could you repeat what you testified?

MR. BERGEN: I think he said he didn't think they would do it.

Q Tell me again what Mr. Lennon said to you.

A He said something to the effect that he was going to try and release the album through the media, but he didn't think the record company would do it.

Q Did you ask him what he meant "through the media"?

A No.

Q Do you know what was meant?

A Yes.

Q What does that mean to you?

A Radio, television.

Q And that was the only time the subject was mentioned?

A Yes.

Q Is it your testimony that during the entire weekend nothing was said about television promotion?

A That is correct.

Q Are you familiar with the TV promotions for old albums? Have you ever watched any?

A Yes, I have seen them on television.

Q Do you know any of the companies that put them on?

A No.

Q Does the name K-Tel mean anything to you?

A No.

Q Does the name Ronco mean anything to you?

A No.

Q You have already testified you never heard the name Adam VIII?

A No.

Q Until this very morning when somebody asked you a question?

A That is correct.

Q That is the first time you heard that name?

MR. BERGEN: Mr. Schurtman knows very well I asked Mr. Aottau on direct whether he ever heard the name. He has testified that he never heard it before this case, your Honor.

MR. SCHURTMAN: Can't I ask him on cross?

THE COURT: Let us not have any argument. Go ahead, Mr. Schurtman.

Q You testified that the recording sessions began on October 21?

A Yes.

Q And where did the recording sessions take place?

A At the Record Plant.

Q When did they begin?

A You mean what time of day?

Q Yes.

A Oh, around 5 o'clock in the afternoon.

Q Was that the Monday following the weekend when you had the rehearsals at the farm?

A Yes.

Q You have testified you rehearsed a couple of hours at the farm. Did you have any further rehearsals before the actual recording sessions began?

A No.

Q You went right into recording after a couple hours of rehearsal?

A Yes.

Q And in those couple of hours of rehearsal you had rehearsed less than six songs?

A Yes.

Q Do you know how many songs you ultimately recorded during the recording sessions?

A Oh, I think it was probably around ten songs.

Q That is your best recollection?

A Yes.

Q You testified of the difference between 7-1/2 ips tapes and 15 ips tapes. When an album is recorded on a master tape who normally keeps the original master tape?

A Well, it is usually kept in the recording studio. They usually have a vault in the studio and tapes are kept there.

Q And if somebody wants to make a lacquer from that master tape is the original master tape used for that purpose or is a copy made?

A Sometimes they make what they call an E.Q.'d copy. Usually the original tape is used for making a

lacquer.

Q The original tape is taken out of the vault and used to make a lacquer?

A Yes.

Q And what happens if nothing happens to that original tape?

MR. GRUMBACH: Objection. He is asking a hypothetical question.

THE COURT: Overruled.

A I guess I didn't understand your question.

Q Isn't it a fact that the original tape is kept in the vault, that copies are made of the master tape?

A You are talking about the 16 track tape or whatever you are recording, the big wide tape, two-inch tape.

Q Why don't you define for us what you consider a master tape to be?

A Well, a master tape is usually a 16-track 2-inch tape; it is two inches wide. And you take and you make a two-track tape of the information that is on it and then you make your lacquers from that.

Q But the original tape is kept in the vault?

A Yes.

Q You don't send that out to make lacquers from?

A No.

Q Have you ever heard of a song called Groovin' by the Young Rascals?

A Yes.

Q Are you aware of the fact that it was put out by Atlantic?

A Yes.

Q If I were to tell you that Atlantic had this song put out on a 7-1/2 inch per second tape --

MR. BERGEN: Your Honor, he is asking him from the list,the exhibit that he put in. He is talking not about the original recording. I believe he is misleading the witness. He is talking about the album that Mr. Levy put out from masters that was sent to him by the company, the company that recorded the album. He is not talking about the original recording that was put out. I have an objection, your Honor.

THE COURT: Please let us not have these speeches. I think that is a nice discussion, which I am sure, although unintentional, is information, and you dont' convey information to the witness during his testimony.

MR. BERGEN: I amnot trying to convey information tothe witness.

THE COURT: If you have an objection, object,

but don't have all that discussion.

MR. PRETTYMAN: May I add my objection, and for the additional reason that the question assumes facts from the exhibit which have not been proved.

THE COURT: You are entitled to ask a question as long as you explain the circumstances as far as they are in the record.

MR. SCHURTMAN: I have not finished the question.

THE COURT: Finish your question.

Q Let me do it this way: Mr. Mottau, I show you Plaintiffs' Exhibit 80 in evidence. Will you look at it, please. Now, Mr. Mottau, if I were to tell you that the companies listed on this exhibit -- Atlantic, CBS, MCA, UA, MGM -- in each of the instances listed in this exhibit furnished 701/2 ips masters for the purpose of creating records, would that change your testimony that no records were ever made from 7-1/2 ips masters?

A No, it would not.

MR. GRUMBACH: It is a mischaracterization of the witness' prior testimony.

MR. PRETTY: I object.

THE COURT: Overruled.

Q You say you have never made any from 7-1/2

inch masters?

A And I don't know of anyone else doing that.

Q Have you ever personally cut any lacquer masters?

A Yes.

Q Which ones?

A Two albums that I produced in my own album.

Q You supervised the cutting?

A Yes, I was there.

Q Incidentally, who was at the farm during that rehearsal weekend?

A There were the musicians and one of the musicians brought his wife with him; Mr. Levy and a young lady; there was Mr. Cahl and his wife, I believe; and there were people in and out during the course of the weekend.

Q Do you know the names of any of the other people who were there?

A No.

Q Did they eat at the dinner table with you?

A Yes.

Q Did Mr. Cahl participate in any way in the rehearsals?

A No. He was in and out.

Q What was he doing when he came in and out,

if anything?

A Bringing people coffee or drinks or whatever.

Q Did he bring anyone any sheet music?

A No, not that I can recall.

Q Have you spoken to any of the other musicians about this case?

A Yes.

Q Which ones?

A Mr. Jesse Ed Davis.

Q When did you speak to Mr. Davis?

A I spoke to him this morning. I spoke to him a couple of days ago.

Q What did you discuss with him?

A Well, we had just talked about it. I wondered how it is going. It is all a big mystery.

Q You wondered how what is going?

A The case is going.

Q Did you know that this case was on trial last week?

A Yes.

Q Where were you while this case was on trial?

A I was in my hotel room.

Q Which hotel room?

A The Drake Hotel.

Q Was anyone telling you what was happening in the case?

A No.

Q Who was paying for your stay at the D ake Hotel?

A Mr. Lennon.

Q But you say you never discussed this matter with Mr. Lennon?

A No.

Q Did you discuss it with any other musician?

A No.

Q Is Mr. Davis in court today?

A Yes.

Q Do you know whether any of the other musici are planning to testify in this case?

A I don't know.

MR.SCHURTMAN: I have no further questions.

BY MR. PRETTYMAN:

Q Who was driving the car up to the farm?

A Mr. Levy.

Q You say you were sitting inthe back. Did you hear the conversation back and forth?

A Yes.

THE COURT: Did you say that you drove back

Sunday afternoon with Mr. Levy?

THE WITNESS: No, I did not.

MR. PRETTYMAN: I have no further question.

THE COURT: Do you have any questions?

MR. GRUMBACH: No.

THE COURT: Thank you very much.

(Witness excused.)

MR. BERGEN: Jesse Ed Davis, your Honor.

J E S S E E D W I N D A V I S III, a witness called on behalf of defendants John Lennon and Harold Seider, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BERGEN:

Q Mr. Davis, where do you live?

A Marina Del Ray, California.

Q Is that in Los Angeles?

A Yes.

Q What is your profession?

A I am a guitar player.

Q How long have you been a professional musician?

A About 16 years.

Q Can you tell us the names of some bands that

you have played with over the years?

A Rod Stuart and the Faces.

Q Can you tell us someof the artists that you have appeared with and played with in recording sessions?

A Helen Reddy, John Lennon, Cher, Perry Neilsen, Ringo Starr -- do you want some more?

MR. BERGEN: That is enough. Thank you.

Q Do you know John Lennon?

A Yes.

Q When did you first meet Mr. Lennon?

A In 1968 at -- it was the filming of a Rollin' Stones group movie in London, England.

Q When did you first work with Mr. Lennon on a record album?

A At the original Phil Spector sessions for this rock and roll album in Los Angeles.

That was around November of '73, I think.

Q When did you next work with Mr. Lennon?

A In the summer of '74 for the Walls and Bridges album.

Q For the Walls and Bridges album?

A Yes.

Q Did there come a time when you were contacted about playing with Mr. Lennon as a musician again with respect to the Spector album?

A No.

Q How about the rock and roll album?

A Yes, the rock and roll album.

Q Do you recall when that was?

A When I was contacted about it?

A Yes.

A I assume it was a few weeks before the actual sessions.

Q When were the actual sessions?

A The last part of October in '74.

Q Who called you about these sessions?

A A girl named May Pang.

Q Did May Pang tell you anything about rehearsals prior to the recording sessions?

A I think a few days before we were to leave for the sessions she mentioned something about a rehearsal.

Q Did she tell you where the rehearsals were going to be?

A The day before I left she called and said we were going to rehearse at a farm in upstate New York.

Q So that your testimony is that there were rehearsals set and then she called you and said that the rehearsals were going to be held at a farm?

A Yes, I think she had to tell me because a car was going to pick us up to take us there.

Q Did she tell you whose farm it was going to be?

A Yes, she said it was a farm that belonged to Morris Levy.

Q Did you know who Morris Levy was then?

A No.

Q How did you get to the farm that weekend?

A A limosine driver met us and took us up there.

Q Who was with you?

MR. SCHURTMAN: The witness keeps saying "we" and "us".

MR. BERGEN: I am just about to ask him who was with him.

THE COURT: All right.

THE WITNESS: I was just about to tell you.

Q Which musician was with you?

A Let me think. Klaus Voormann.

Q Was anybody with Mr. Voormann?

A Yes, his wife Cynthia.

Q Do you know what day you left Los Angeles to go to the farm?

A Thursday, I believe.

THE COURT: You are referring to a limosine meeting.

What did you do, did you take a plane from Los Angeles? You flew from Los Angeles?

THE WITNESS: To New York.

THE COURT: Was Mr. Voormann with you on that trip from Los Angeles?

THE WITNESS: Yes.

Q And his wife Cynthia?

A Right.

Q And you were met at the airport by a limosine?

A By the driver of a limosine.

Q What time did you arrive at the farm?

THE COURT: You were met at the airport and driven right up to the farm, right, or did you stop in New York or what happened?

THE WITNESS: We stopped at a liquor store.

THE COURT: But you didn't stop at a hotel in New York and lay over or anything like that?

THE WITNESS: No.

THE COURT: You went more or less directly to the farm, right?

THE WITNESS: Yes, more or less.

Q What time approximately did you get to the farm?

A I think it must have been sometime around two in the morning.

Q To go back to the conversation you had with May Pang about the rehearsals, did you ask her why the rehearsals were going to be held at the farm?

A No, I didn't.

THE COURT: Are you going to cover what day he arrived?

MR. BERGEN: I think he said he arrived and he got there 2 o'clock the following morning.

THE COURT: Friday morning?

MR. BERGEN: Friday morning.

THE COURT: In other words, you came in from Los Angeles on Thursday, is that right?

THE WITNESS: Yes, that's right.

Q You arrived at 2 o'clock in the morning, Friday morning?

A Right.

Q Did there come a time that you met Morris Levy that weekend?

A Yes, the Friday morning when I woke up.

Q Was that at breakfast?

A No, it was at lunch.

Q During the course of the weekend, did you have occasion to talk to Mr. Levy?

A Yes, I asked him how to work his electric player piano.

Q Did you have any other conversations with Mr. Levy during the course of the weekend?

A I think we played a few games of backgammon.

Q At any time during the course of the weekend did Mr. Levy tell you that John Lennon was doing an album

for him?

A For Morris?

Q For Morris.

A No.

Q During the course of that weekend, did you hear the name Adam VIII, Ltd. mentioned?

A No.

Q Did you hear the name Big Seven Music Corp. mentioned that weekend?

A No.

Q Did you have any discussions during the course of the weekend with Mr. Lennon to the effect that he was doing an album for Morris Levy?

A No.

Q During the course of the weekend at any time did you hear Mr. Lennon say, and I quote, "We are making this package for Morris, it is going to be a unique package, it's never been done before, it is an exciting project."

A Did I hear John say that?

Q Yes.

A No.

MR. SCHURTMAN: What are you quoting from, sir?

MR. BERGEN: I am quoting from Mr. Levy's testimony.

MR. SCHURTMAN: Page?

MR. BERGEN: 233.

Q During the course of the weekend, did you hear any of the musicians or did you ask, and again I quote, "What's this package going to sell for," and hear Mr. Levy respond, "$4.98," and then have that musician say "That's ridiculous, that's too cheap for how good this is."

A No, I am not interested in that. I never asked that.

MR. SCHURTMAN: Page number, please?

MR. BERGEN: 234.

Q And did you ever hear Mr. Levy explain to you or the other musicians, how on TV it has to be sold cheaper because you got to get the people to write a check and mail it in and it takes an effort on their part and it has to be a great price?

A I didn't hear that.

Q During the course of the weekend, did everybody take their meals together?

A For the most part, unless there was a little overflow on the table. I think there was another table set up a couple of times.

Q Can you describe the table for us?

A A big round table.

Q How far apart were people who were sitting at the table, in other words, how wide was the table?

A Eight feet in diameter, something like that.

Q During the course of the weekend, while you were having meals, did you ever hear a discussion between John Lennon and Morris Levy to the effect that Mr. Lennon was doing an album for Morris Levy?

A No.

Q During the course of the weekend, did May Pang ever tell you that John Lennon was doing an album for Morris Levy or one of his companies?

A May Pang never told me that.

Q Did any of the other musicians tell you that?

A No, not to use those exact words.

Q During the course of the weekend, did you have any discussion with anybody about how the album was going to be marketed?

A I had a discussion with May Pang that the album was -- they were trying to set up the thing where they could sell it as a TV mail order album, but that there was some concern over John's record contract not allowing him to do that.

Q Was there any elaboration on that between you and May Pang?

A No.

Q Do you recall when the recording, the actual recording sessions of the rock and roll album started?

A I think the following morning.

Q That would be October 21?

A I guess so. I don't know.

Q Do you know when they were completed, the actual sessions?

A The following Friday.

Q Was Morris Levy present during any of the recording sessions?

A Nobody gets in John's sessions.

Q Do you know Phil Cahl?

A I met him.

Q Was he at the farm on the weekend?

A Yes.

Q Was he present during the recording sessions?

A No.

Q Were there any discussions during the recording session about how the album was going to be marketed?

A No.

MR. BERGEN: I have no further questions.

xx CROSS EXAMINATION

BY MR. SCHURTMAN:

Q Mr. Davis, I believe you testified that you participated in certain recording sessions with Phil Spector.

A That's right.

Q When did these take place?

A November of '73.

Q And that was in California?

A Los Angeles.

Q What were you recording at the time?

A Phil Spector songs.

Q What does that mean?

A Phil Spector compositions.

Q These were all compositions by Phil Spector?

A I think for the most part, except for maybe the one or two odd one.

Q Were they old rock and roll tunes?

A Song hits of the past, yes.

Q Did you ever hear anyone use a title for the album that you were working on?

A No, there was no working title at that time.

Q Did anyone refer to it as Oldies and Goodies, or words similar?

A No.

Q Do you remember the titles of any of the songs that you worked on under Spector?

A Yes.

Q Would you name them?

A Be My Baby, Angel Baby, You Can't Catch Me, Sweet Little 16. I forgot the one I liked the best.

Q Any others.

A No, I can't think of any more.

Q Do you remember how many tunes you actually recorded under Spector's direction?

A I think it must have been a lot of them. I could have made a career out of it.

Q Was it more than six?

A Yes.

Q Was it more than ten?

A Well, I don't know if the songs amounted to more than six songs.

I think we tried a few songs more than one night.

Q What happened to the recording sessions?

A What happened to them?

Q Yes.

Did you stop at some point?

A Yes, they ended.

Q Do you know why they ended?

A Ran out of songs.

Q Pardon.

A I don't know why they ended.

Q You were simply told one day not to show up anymore?

A No, they would tell us when to show up, and if they didn't tell you to show up you wouldn't go there.

Q After the recording sessions ended, did you ever inquire what had happened to the album?

A No.

Q You never asked anyone?

A No.

Q When was the next time you heard about the Spector songs?

A I think it must have been during the Walls and Bridges session.

There was some talk, some small talk about trying to finish those up, there wasn't enough tunes to do a complete album and sometime we will have to get to work and finish that, record enough tunes to complete that album.

Q With whom did you have that small talk?

A John Lennon.

Q Can you tell us as best as you recall, what John Lennon said about the Spector songs?

A I think he said that some of them were crap and that you couldn't use them.

Q Did he indicate which ones?

A Yes, I think one of them was my favorite one. I can't remember the name.

Q He said that was crap?

A Yes.

Q And he couldn't use it. Did he indicate whether he had any plans for --

A Angel Baby, that was it.

Q What?

A Angel Baby.

Q Angel Baby was your favorite?

A Yes.

Q And he didn't like it?

A He said he didn't.

Q Did he tell you what he was planning to do with the songs that he felt were not crap?

A I guess he had plans to put them out on the album.

Q Did he say in what manner he was going to put them out?

A At this point in time, the Walls and Bridges time? No.

Q The Walls and Bridges album, was that all songs composed by John Lennon?

A I think for the most part.

Q Do you remember a song in it called Ya Ya?

A Yes.

Q Were you there when Ya Ya was recorded?

A No, I wasn't.

Q Do you know how it was recorded?

A Do I know how it was recorded?

Q In what manner it was --

A What do you mean "how"? In a tape recorder.

Q Do you know who participated in the recording of Ya Ya?

A According to the linger notes, it was John and his son Julian.

Q Did any of the regular musicians participate in that recording?

A Just John.

Q But any other songs he had other musicians?

A Yes.

Q When you were told that the rehearsal was going to be at a farm, did you express any surprise?

A No, John never surprises me.

Q How many hours did you rehearse up at the farm?

A It seemed like forever.

Q Did you rehearse in the morning?

A No.

Q Did you rehearse in the afternoon?

A Those were usually my mornings. Yes.

Q Did you rehearse in the evenings?

A Yes. It seemed to me like they were never going to stop.

Q Do you remember how many songs you rehearsed up there?

A Reams. I don't know.

Q Do you remember the titles of the songs?

A Good Golley -- a bunch of old Little Richard songs.

We just tried a lot of songs.

Q Did you use any sheet music?

A I think there was a few lead sheets laying around, but you don't need a lead sheet for Tutty Fruitty, you know.

Q Did John use any lead sheets?

A No.

Q Do you recall May Pang typing up some lead

sheets for John?

A I think she typed up some lyrics, not -- the lead sheet has the actual written melody in music notation.

Q But did you see May Pang typing up lyrics for John Lennon to use?

A Yes.

Q What was Phil Cahl doing during these sessions?

A Bringing drinks.

Q Did he bring any sheet music or anything like that?

A I think he did one time, yes.

Q Do you know what instruments were used, other than the musicians' own instruments?

Let me take that back.

Did you bring your own instrument?

A Yes.

Q What was that?

A Electric guitar and an amplifier.

Q Did the other musicians bring their own instruments?

A For the most part. I don't think the drummer brought his own set of drums.

Q Do you know where the drums came from?

A No.

Q During either the rehearsals or the dinner conversations or the meal conversations, was anything said other than what you have testified before about this being put out as a TV promotion?

A No. There was just a lot of polite chatter.

Q Was there any talk about the type of album that was being made?

A Didn't seem like we ever talked about music at the table.

We just had a good time, lots of laughs, you know.

Q Do you recall who else was at the farm other than the musicians and Mr. Lennon and Mr. Levy and Mr. Cahl and May Pang?

Those are the names you have mentioned. Do you remember anyone else?

A Yes, there was Morris' staff, like a couple of people, a couple of ladies who cooked, and a colored guy who seemed to do most anything, musicians and some pretty ladies.

Q Were there any other defendants at the farm that you recall?

A Yes, one I remember in particular. I think his name was Jerry. I don't know his last name. But he

said he was -- had something to do with a record company called Fania Records, and they put out some of my favorite records, latino music, you know.

Q Did you have any conversation with this fellow Jerry of Fania Records about what type of work you were doing up there?

A Not about what type of work I was doing up there, no.

Q About what type of rehearsals were being conducted?

A No, not about what type of rehearsals.

Q Any discussion about the type of album you were going to put out?

A Not any discussion about the type of album we were going to put out.

Q Was there any discussion among the musicians and Mr. Lennon as to a working title for the album you were working on?

A Yes, I think at that point it was going to be called Old Hat and then it went to Gold Hat, or something like that.

Q Did the word rock and roll appear in the title in any way, or in the sub-title?

A No.

Q Were you cognizant of the fact that you were recording rock and roll oldies?

A Of course.

Q When did you leave the farm?

A When did I leave the farm?

Sunday.

Q When did the actual recording sessions start?

A Monday, the next day.

Q Were there any more rehearsals in between the farm rehearsals and the actual recording?

A I think the first day we went into the studio was sort of like a dress rehearsal, we did all the songs down from top to bottom.

Q Do you remember which songs you did?

A A Little Richard medley, Peggy Sue.

Gee, I can't remember the rest of them.

Q Do you know the difference between a 7-1/2 inch per second tape and a 15 inch per second tape?

A Yes.

Q Are you familiar with the manufacture of records?

A Yes.

Q The pressing process?

A Yes.

Q Do you know of any instances where 7-1/2 IPS tapes have been used?

A Well, sure. But so what? I mean, you get a few odd balls who do that.

Q You are saying that you do know of instances?

A Well, I mean, back in the old days, yes, that's all they had.

Q When are the old days?

A The fifties maybe, mono tapes.

Q And since then?

A Well, since then I think engineering standards seem to agree that 15 inch per second gives you better quality sound.

Q But that is not my question.

A Some people say 30 inch per second.

Q Do you know of any instances in recent times where 7-1/2 inch per second tapes have been used?

A In recent times? I don't know of any. I imagine there has been?

MR. SCHURTMAN: Your Honor, I have an application.

Since we have a witness here who was actually at the old Phil Spector recording sessions, I request permission at this point to play a cassette on a cassette

recorder and ask the witness to identify the songs in that cassette.

THE COURT: What is the reason?

MR. SCHURTMAN: Mr. Levy testified that there came a point where Mr. Lennon furnished him with a cassette containing the Phil Spector songs.

Mr. Levy will identify them. I may or may not be able to get Mr. Lennon to identify them.

THE COURT: What is the reason for identifying the songs? What will that mean?

MR. SCHURTMAN: It will mean several things, your Honor.

In the first place, the defendants claim that the only time Mr. Levy was allowed to listen to the Spector songs after that meeting on October 8 was so that he could hear a couple of songs that were owned by Big Seven. There was no other purpose for playing the Spector songs for him. That is the defendant's position.

We offer this cassette, which was furnished to Mr. Levy by or through Mr. Lennon, to show that Mr. Lennon wanted him to listen to all of the Spector songs, and then we will draw certain appropriate inferences from that.

Secondly --

THE COURT: Why is it necessary to play them?

MR. SCHURTMAN: I just want to make sure that there is no dispute that these are in fact the final Spector songs.

THE COURT: Is there a dispute?

MR. BERGEN: I don't know what cassette Mr. Schurtman is talking about, your Honor, but I believe that we could probably stipulate as to what that cassette says.

MR. SCHURTMAN: Then let's do it before this witness goes back to California.

MR. BERGEN: I don't see what this witness has got to do with it.

THE COURT: Is that in evidence now?

MR. SCHURTMAN: Yes, it is. It is Plaintiffs' Exhibit 25A in evidence.

It has seven cuts, seven songs on it, and if defendants are prepared to stipulate that these seven songs are the Spector recordings --

MR. BERGEN: I will stipulate that those seven songs, the seven tracks on that cassette, are a portion of the Spector recordings, and I will also stipulate, if Mr. Schurtman is willing to, that prior to the time that that tape was given to Mr. Levy by Mr. Lennon Mr. Lennon did additional work on the Spector recordings and that that

cassette represents some of the original recordings made with Mr. Spector, plus some additional work that was done by Mr. Lennon before he gave that cassette to Mr. Levy.

MR. SCHURTMAN: Then I think it is appropriate for this witness to listen to the music and identify what had been recorded by him in California.

THE COURT: As I understand it, what the defendants are willing to stipulate is that Exhibit 25A contains so-called Spector recordings, although not necessarily all of the Spector recordings.

MR. BERGEN: That's correct, your Honor.

THE COURT: But whatever is on 25A is Spector recordings, right?

MR. BERGEN: Yes, your Honor.

THE COURT: All right.

MR. BERGEN: But that there was additional --

THE COURT: Wait a minute. Let's take it one step at a time.

It seems to me that that satisfies your need. You wanted to have the tape identified as Spector recordings, right?

MR. SCHURTMAN: That this witness participated in during these recording sessions in California.

THE COURT: Look, Mr. Schurtman --

MR. SCHURTMAN: I accept the stipulation, your Honor, except there is a qualification to it.

THE COURT: What is the qualification?

MR. SCHURTMAN: As I understand Mr. Bergen, he says yes, these are the Spector recordings, except that some of them were changed by Mr. Lennon before this cassette was made. That leave me up in the air again.

If Mr. Bergen is willing to give me an unqualified stipulation that this cassette contains seven of the original Spector recordings as they were recorded under Spector's production, then I don't have to question this witness about it.

THE COURT: He says --

MR. BERGEN: I can't do that.

THE COURT: He says it isn't quite the fact.

MR. SCHURTMAN: Then I would like the witness to listen to these recordings and tell the Court which ones were recorded at the time he participated and which ones came later.

THE COURT: It isn't a matter of which ones come in later.

What Mr. Bergen is saying is that in some way some work was done -- I don't know what that work consisted of -- but that some work was done on the Spector tapes before

they got into the form contained in 25A. He is not saying that there were completely new songs. Right?

MR. BERGEN: That's correct, your Honor.

THE COURT: What do you mean, some work.

MR. BERGEN: There was some overdubbing. Mr. Lennon over dubbed some lyrics. I think there was some remixing of some of the tracks.

THE COURT: What do you mean, "overdubbing."

MR. BERGEN: Mr. Lennon would go in and record a new voice, his new voice, on a portion of one of the tracks.

In other words, if the voice didn't sound right when he heard the Spector take, the first time he would go in and erace his voice and overdub a new voice.

THE COURT: In other words, using these tracks --

MR. BERGEN: Using the basic lyric tracks.

THE COURT: All right.

MR. SCHURTMAN: That leaves me up in the air, your Honor.

THE COURT: Whether it leaves you up in the air, what I fail to see is what difference does it make in this litigation. I don't understand.

As one of the many, many events that are alleged to have taken place in this litigation, Mr. Levy has testi-

fied that at some point -- was it the birthday party; whatever it was -- Mr. Lennon gave him this cassette, right?

MR. SCHURTMAN: It wasn't at the birthday party.

THE COURT: When was it?

MR. SCHURTMAN: It was at a subsequent point; the exact date hasn't been established.

THE COURT: At some subsequent point.

MR. SCHURTMAN: Yes.

THE COURT: Now, if we play them in Court I don't know what that is going to do, and if we have this witness hear them, I don't know what that is going to do.

MR. SCHURTMAN: Let me explain why I am offering them, and I will simply make it as an offer of proof.

I am offering them for the purpose of showing that Mr. Lennon and Mr. Levy wanted to know which of these Spector tapes could be used in the album that they were proposing to put out together, that Mr. Lennon invited Mr. Levy to come to the studio to listen to the Spector tapes, all of the Spector tapes, not only the ones that Mr. Levy's company owned a copyright to, that after Mr. Levy had listened to the Spector tapes he said, "I would like to listen to them some more because I want to hear what can be put into our new album," and at that point this cassette was

furnished to Mr. Levy.

If all we had was that these were the same Spector tapes that already existed and Mr. Lennon furnished them to Mr. Levy, again, we can move on to something else.

In my summation, I will explain the significance of it. But Mr. Bergen now injects a new problem. He says, well, yes, they are the old Spector tapes, but they were modified.

He doesn't say when they were modified, he doesn't say what the precise modifications were.

If I let this witness go without at least trying to get him to identify them I will be left only with Mr. Lennon's testimony as to how the Spector tapes were changed.

THE COURT: What difference does it make whether that cassette contains the tapes as recorded originally by Spector or contains the tapes with some modifications by Mr. Lennon as described by Bergen?

If I could understand that I would know whether we have to spend a half an hour listening to that thing.

MR. BERGEN: Your Honor, Mr. Lennon will very shortly testify --

THE COURT: Wait a minute.

What is the purpose that you have, what does it matter?

MR. SCHURTMAN: It is part of the proof we are putting in that the album was intended to salvage a portion of the old Spector tapes, to put in some new songs, and then do what we intended to do with it.

THE COURT: We have been over it round and round. If there is an objection --

MR. BERGEN: I object, your Honor.

THE COURT: We will sustain it, because you haven't explained in any way that I can understand what difference it makes whether Mr. Lennon worked on this before it got on 25A or didn't.

MR. SCHURTMAN: Your Honor, I take it Mr. Bergen's original stipulation stands?

THE COURT: Of course it does. Right, Mr. Bergen?

MR. BERGEN: Of course, your Honor.

THE COURT: He is speaking on behalf of the defendants.

MR. SCHURTMAN: Are the defendants prepared to stipulate that it makes no difference to this case whether these were the original Spector takes or whether they were the Spector tapes as modified by Mr. Lennon?

If we all agree that it makes no difference, as your Honor says, fine, then I don't need it at this point. If they say there is a difference, then I would like to

pursue it.

THE COURT: I fail to see the difference.

MR. BERGEN: I don't understand what the difference is. I don't think Mr. Schurtman has articulated it yet.

THE COURT: All right. Let's drop it. The stipulation stands.

These are the Spector tapes?

MR. SCHURTMAN: And the fact that Mr. Lennon may have added something to them makes no difference to this case.

MR. BERGEN: I am not going to stipulate that, your Honor. That is what Mr. Schurtman is arguing.

MR. SCHURTMAN: I don't want to be met with an argument in the summation when I no longer have a witness here to cross examine saying, "Oh, but it makes a big difference that Mr.Lennon made some changes in the Spector tapes."

THE COURT: Look, we have been sitting here for 15 minutes. Nobody can articulate any difference. If nobody can, then that is all we can say.

MR. BERGEN: Your Honor, I have said that there is a difference. Mr. Lennon did some additional work on them and he will testify to what he did.

THE COURT: Let's not waste time. We don't know that that has any significance to this case. That's the point.

If it had significance, if it was a burning, crucial issue whether this contained the tapes as originally recorded in California with no modifications by Mr. Lennon, if that was a burning issue in this case, then I assume I would have to let Mr. Schurtman play the tapes and see if this witness could possibly remember is this the way they were picked up in Los Angeles or not.

I don't know how he could possibly say that.

THE WITNESS: Excuse me a second. I think maybe some of the original recordings might be able to be improved greatly and were those original recordings issued on a record they might be artistically embarrassing.

THE COURT: Let me ask you this:

Did you ever hear the Spector tapes as originally recorded?

THE WITNESS: Yes, I heard them both ways.

THE COURT: What do you mean, "both ways"?

THE WITNESS: Finished and original.

THE COURT: By "finished" you mean what, finished by Mr. Lennon?

THE WITNESS: With all the sound effects added,

a new vocal. You know. You record sound on sound, you can add things.

THE COURT: You mean as finished by Mr. Lennon or finished by somebody else?

THE WITNESS: Yes, as finished by Mr. Lennon, the issued record product.

THE COURT: How long will it take to play that?

MR. SCHURTMAN: I am not sure we have to play them all. It is just a few excerpts.

THE COURT: Let's take a recess and let me know what you want.

I wish you hadn't spent all this time arguing about it, but we will go ahead.

(Recess.)

MR. SCHURTMAN: I have to state for the record what I am doing.

Your Honor, we will play Plaintiffs' Exhibit 25A, which is a cassette on a criterion 120R Cassette Recorder, which is not a particularly professional model. It was purchased yesterday at Lafayette Music Stores for approximately $39.

The reason I emphasize this, your Honor, is I want the record to show that it is not being played on professional sound equipment.

THE COURT: All right.

MR. BERGEN: Your Honor, before we start that, I would be willing to stipulate with Mr. Schurtman as to the titles of the songs that appear on this cassette, because I have listened to the cassette.

THE COURT: All right.

Let's get going. We talked so long about that and we didn't get any place really.

MR. SCHURTMAN: Would it be satisfactory to everyone if we just made excerpts from each song, in other words, a minute or so, instead of playing the whole thing.

THE COURT: Yes, certainly.

MR. SCHURTMAN: One thing I am worried about is eracing it by mistake.

(Tape played.)

THE COURT: Is this the first song on the tape?

MR. SCHURTMAN: Yes, it is.

THE COURT: What is the title of that?

Q Mr. Davis, do you know the name of that?

A It is called Bonie Maronie.

Q And did you hear enough of the song to identify whether this was a Spector recording in which you participated?

A Yes, it is a Spector recording in which I participated.

THE COURT: You said you could tell the difference perhaps between what you said with the original versions and the finished versions?

THE WITNESS: Not on this $39 cassette.

Q Not on this $39 cassette recorder?

A No.

Q You would have to listen on professional equipment?

A Well, maybe not a full studio; something a little better than that. I don't know if I could tell the difference or not.

MR. SCHURTMAN: If the witness can't tell the difference from this equipment --

THE WITNESS: I might be able to.

MR. SCHURTMAN: -- I don't see there is much point in continuing.

THE COURT: That is up to you. I will leave it up to you. If you don't think there is any use, we won't do it.

MR. SCHURTMAN: Let me play one more or two.

THE COURT: Yes.

MR. SCHURTMAN: I will move it and try to hit the next cut.

(Cassette played.)

Q Can you identify that song?

A Yes, that is my favorite song, Angel Baby.

Q Can you tell by listening to this cassette recorder whether that was the original version you recorded?

A Not by listening to it on this cassette recorder.

THE COURT: Is Mr. Lennon performing on that?

THE WITNESS: Yes. I can tell that much.

THE COURT: Is it the group singing or is it one voice or what are we hearing?

THE WITNESS: I think it sounds like a double track vocal.

THE COURT: What does that mean?

THE WITNESS: That means with the original

vocal you go back and record sound on sound, singing the vocal again. You get two vocals.

THE COURT: But Mr. Lennon is the only singer here? It is not a group?

THE WITNESS: No, there is no group.

THE COURT: Do you want to play any more?

MR. SCHURTMAN: No. The one thing I would like to do is perhaps stipulate with Mr. Bergen on what the songs on the cassette are so we will have that in the record.

THE COURT: Yes.

MR.SCHURTMAN: According to my notes here: Bonie Maronie, Just Because --

MR. BERGEN: I don't believe it is. Angel Baby.

THE COURT: That was the second song, Angel Baby?

MR. SCHURTMAN: Maybe Mr. Bergen had better read them.

MR. BERGEN: Bonie Maronie, Angel Baby, Just Because, Be My Baby, Sweet Little Sixteen, Since My Baby Left Me, and You Can't Catch Me.

MR.SCHURTMAN: I think we are in agreement on that.

THE COURT: Anything else with this witness?

MR. SCHURTMAN: No, I have no further questions of this witness.

THE COURT: Any further questions?

MR. PRETTYMAN: Yes, your Honor.

CROSS EXAMINATION

BY MR. PRETTYMAN:

Q You mentioned it might be possible that somebody recorded an album from 7-1/2 tape even in recent years. Do you know of any instance at all, Mr. Davis, in recent years where a new album of a major artist was made from a 7-1/2 inch tape as opposed to a 15 inch tape?

A I don't know of one, no.

Q You mentioned in passing when you were discussing this subject of mono, is there some connection between Mono and whether you have a 7-1/2 or a 15?

A Yes.

Q Are most monos on 7-1/2?

A You can make a mono at any speed, stereo or any speed.

MR. PRETTYMAN: That is all I have.

BY MR. GRUMBACH:

Q Mono recording means monaural.

A Yes.

Q One track as opposed to stereo, which is two

track?

A Yes.

Q When you were referring in your earlier testimony to mono tapes being on 7-1/2, can you tell us whether or not stereophonic tapes preceded or followed monaural recording in the industry?

A Preceded or followed?

Q Which came first in the industry, monaural or steophonic?

A Monaural.

MR. GRUMBACH: Thank you.

REDIRECT EXAMINATION

BY MR. SCHURTMAN:

Q Have you given any written statements or any affidavits to anyone in this case?

A Have I what?

Q Have you signed any written statements?

A About this case?

Q Concerning the facts in this case at any time?

A No.

Q You never put anything in writing relating to this case?

A I have wrote down the day I was supposed to be here. That is about it.

Q But not about the facts in the case?

A No.

MR. SCHURTMAN: No other questions.

(Witness excused.)

MR. BERGEN: John Lennon.

MR. SCHURTMAN: Before John Lennon is called may we make an offer of the contracts?

MR. BERGEN: I would object to that.

MR. PRETTYMAN: They are going to come in.

THE COURT: We discussed that at great length Friday morning. The defendants believe that the issue of contracts have to be accompanied by some explanation and testimony.

MR. SCHURTMAN: I would offer the contracts as part of our case. They are clearly admissible in evidence. If the defendants later want to explain them as part of their case, they are certainly entitled to do it.

THE COURT: The contracts are coming in. It really would not mean anything to me or help me to have them in the record now.

MR. PRETTYMAN: They are coming in shortly.

THE COURT: Yes, I know they are.

JOHN WINSTON ONO LENNON,

a defendant, called as a witness on his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BERGEN:

Q Mr. Lennon, where do you reside?

A New York.

Q Were you at one time a member of the Beatles?

A Yes.

Q Will you tell us who the other members of the Beatles were?

A Ringo Starr, Paul Mc Cartney and George Harrison and myself.

Q When did the Beatles begin recording together approximately?

A Well, I mean we made records before in Germany, but officially our career started in 1962.

Q That was when you entered into a contract with EMI?

A Yes.

Q Did that recording contract with EMI give EMI exclusive right to the Beatles recordings?

MR. SCHURTMAN: I object.

THE COURT: I am going to take testimony as to his understanding of what the contractual relationship is. Obviously, that is subject to me examining the documents. But we have had testimony from Mr. Levy as to what he understood or what he picked up from sources, and I really think in all fairness we can receive what Mr. Lennon's understanding is.

So I will overrule the objection. Let us have the question read, please, again.

(Question read.)

THE WITNESS: As far as I understand, they own everything I do, even if I speak.

Q That is not only as a group, but as an individual artist?

A Yes.

Q Is the contract still in effect?

A Yes, I think it runs out any day now.

Q Can you tell us approximately how many record albums the Beatles distributed through EMI?

A I have not a clue -- everything we make.

Q Have you ever produced any of your own record albums and acted as the producer?

A Yes, I have co-produced and I have produced.

Q Have you produced record albums of other

artists?

A One or two, yes.

Q Can you tell us who those other artists were?

A Harry Neilson, Yoko Ono, David Peel, Elephant's Memory -- there was a group called Elephant's Memory.

Q Mr. Lennon, can you describe the development of the Beatles and you as a recording artist, in other words, how the Beatles developed?

A How we learned the trade?

Q Yes.

A Well, when you are 22 and you get your contract, you are so thrilled to be allowed in the studio and also you ae ignorant, usually, that you have no idea what is going on, you just know you are a live band and you have been playing in dance halls and somebody is going to put you on tape, record you and make a record, and over the years we learned how to make a record ourselves and how in some instances to improve it. We just learned the trade of recording over a few years until finally by about the third or fourth album we virtually had taken complete control of the recording, meaning we then knew what could and could not be done. So we had the last words on it, even though we still had a producer, we overlooked the recording session, and gradually over the years we learned everything about it,

until we made all the decisions, including the cover of the album, what was written on it, just everything to do with the production and even the selling and the ads in the papers -- we controlled everything artistic about the albums.

Q When you say everything artistic about the album, you mean right from the selection of the songs up to how the record si going to be sold?

A Well, that we controlled virtually from the beginning, although it was pretty hard when you are very new at it, because they try and impose other people's songs on you, which is what happened at the very beginning of our contract, and we made a half-hearted effort to record another person's song. But we stood our ground and finally forced them to let us do our own songs, even though we really did not have that much power then.

So what I am saying, we were arrogant enough, if that is the right word, to want to record our own material when most people would have been thankful just to be in the studio.

Q Now, you mentioned the album cover.

A Yes.

Q Do you mean that the Beatles after the first few albums had total control over what the album cover was, the jacket?

A At first EMI would just decide. They ever provided the photographer and told us where to stand, and they took the picture and they put it out. And they did that for the first few. I don't know. Maybe about the third album we got control of the cover.

MR. SCHURTMAN: I don't want to interrupt a narrative flow, but when the witness says, "we got control," what does that mean, that there was a change in the contract or simply in the modus operandi?

THE COURT: I think it was plain.

In other words, you are not talking about formal revisions in the contract? You are talking about just the way things were?

THE WITNESS: Yes, I mean they were not obliged to let us control our own covers. As far as I know, I don't think it was written in the contract. I don't think people cared about it in those days. It was not normal for artists to do their own covers.

Q Were the Beatles one of the first groups to gain control of doing the covers and supervise that in total?

A I can only speak for pop music. I have a suspicion that jazz people and classical people have more control than did those of pop music. In general,

nobody cared about their covers. Maybe they just put a picture of the artist on the front.

Q Now, would you generally describe the recording processes for the Court from the moment you got into the studio?

A Well, it varied from artist to artist.

Q In yoru experience tell us what procedures you followed?

A In general I take the group into the studio and in general I record my own songs, so I have to teach them the songs,either in the studio or outside of the studio. Generally I teach them inside the studio, like a rehearsal or run through.

And for that we would put it on just a one track or a two track. We would not waste time setting a 16 track machine, which cost money for the tape and it is not worth it. So we just run a rehearsal on a smaller tape. And then we will try after we run through all the songs and I have decided which one they seem to be getting the best, after two days of that, say, I will start laying down the basic tracks for the first song. It usually take the engineers an evening or half an evening to get the sound of the drums, then the sound of the base, then the sound of the guitar, then the sound of the piano, and then

a combination of all those people playing at once.

Q You mean to get it at the right level?

A The engineer has to know virtually what the drum is going to do, what it is going to sound like when it is hit, whether it is going to distort, so that there has to be an interruption and a sound check without having anything to do with the song, then rehearse the sound without me. The engineer will say drummer, drum, play your tom-tom, and he will play the tom-tom and adjust the mikes and move them around and play the tambourine or cymbals. They have to go through the whole thing before they even start the session.

Usually, I hire the studio, so I know I am going to be there for a month; I am usually there for ten days with the musicians, and so all the instruments are set up already, but even with that, after the run-through and the sound check still each night they will run through the sound of the instruments again, because people come in and move microphones, or the musicians forget and they kick the amplifiers or they change the volume.

Q You mean then before you start the sessions?

A Yes, every night. That is why we get there arly and I generally like to sing with the musicians. I may be in a booth that is supposed to be soundproof.

But I like to sing with the musicians, because then I get the rhythm; I like to do it by feel. Quite often I can't use my vocal, but at least I know how it was.

THE COURT: When you say you can't use the vocal?

THE WITNESS: I can't use, sometimes it is no good, and I like to play an instrument myself. So if I am lucky, I get a vocal. But even though I am singing, I have to be listening to the drummer and the bass player and all. I go around and say, "Has anybody got any secrets I didn't hear?" Sometimes they will you when it is too late, "Oh, yes, I played a wrong note here."

"Why didn't you tell me? I didn't hear it."

So it is a matter, I have to produce it listening hard and do this for ten days usually. I usually put ten tracks on an album. I will tell you the reason if you wantto know.

Q Yes.

A In general, I put ten tracks because I have learned overthe years -- well, everybody knows this -- after you get past 20 minutes the volume of a record has to go down, and it has something to do with the grooves getting thinner. I have had records over 20 minutes, but when it ges gets over 20 minutes, the volume goes down, and if you

average out ten songs it works out to about 20 minutes a side. So it usually takes about ten days to play the basic tracks down with the musicians, and then usually I send them home, and if I am going to overdub, like a saxophone or xylophone or flute or whatever, I want to put it on, then I will hire a new lot of people with those instruments.

Q Talking about how long a record should be, what you mean is that there is just so much space on each of a record for the sound that is going to be of a proper quality?

A Well, it is a matter of taste. I am not saying you ca-not have more.

Q I am talking about what you do.

A I tcan be done to 28 minutes, but I don't like to do that, because I want the record loud, and if the groove is deeper you can get more bass drum, and it even goes to the selection of what to put nearest to the center of the record, because the nearer to the center of the record you get the quieter it has to be. The grooves change when you get to the middle . That is what I have learned from the engineers.

Q You say you like the records loud?

A Yes, I like them to have depth.

Q If you put your record on at a certain sound,

say my stereo at home, it will play a certain level, if you put on another record without adjusting the volume it may not be as loud?

A That is quite possible, yes.

Q Now, you started talking about the next step after you finish the first basic tracks with the musicians. What is next?

A Every time I go in I relearn the whole business. So sitting here cold it is hard to remember what I do next. Probably I take those things home play them on a cassette, listen to them, and decide what kind of instrumentation I want to put over the top of it.

Q You mean what instruments in addition to the basic instruments that have been put on by you during these ten days?

A There is a chance that I have a few things I want to do with the tracks. In the meantime, I takethem home and listen, or go to the studio and listen, and then decide the next phase, whether I am going to put in a rhythm section or something else.

Q Tell the Court how that is done?

A In general, you still record onto the 16 track, if you have not used up all the space. If you have used up all the space, which sometimes happen, as I also like to

record with a percussionist alive with me, then I will have to mix down a couple of tracks to make room for the strings and the saxophones, and if it is strings, they bring in a 30-piece orchestra or whatever I have ordered, and usually I have worked with an arranger or a writer, and I hum to him, and I want the cellist to go this way, I want the top violins to play this melody or counter-melody, and he will write it down for me, and then they will print it out so the ones that have to read the music, which is generally the violinists can read what I want and record them.

Q And those additional instruments laid down on whatever tracks you have left?

A Yes, and if there are not any tracks, I will make tracks. Maybe I will wipe off the percussionist and come back another day. Maybe he is not necessary. Quite often I will wipe off my own guitar and make room for other instruments, or I will play the two instruments together.

THE COURT: On this business of the 16 tracks on the tape, the instruments are not playing separately? They are playing together?

THE WITNESS: Most of the time. Sometimes the sound leaks. Sometimes I will not use every

musician in that room,because his instrument may be leaking onto another track. Maybe I will go on to listen to the playback and there will be a guitar coming in on the drum track, so I will say to the electric guitarist, "Don't play until we have got it right. And when I am satisfied, then I will say, "Okay, you go and do your bit" to the guitarist, the electric guitarist or the organist or whoever it may be. Any combination is possible.

THE COURT: Let us just take a session, for instance, when you are recording, give me, for instance, whom you may have there? You would be singing.

THE WITNESS: I would either play the piano or the guitar, depending on how I had written the song. Then I would have the electric guitarist and a pianist, I would have a bass player, a drummer, and possibly a percussionist.

THE COURT: They are all playing together.

THE WITNESS: Together, or maybe one or two of them are not playing for the first time.

THE COURT: They are in and out?

THE WITNESS: Yes.

THE COURT: Are you telling me that each instrumental will be picked up on a different track?

THE WITNESS: Right.

THE COURT: That is achieved because the sound is all blending there in the studio?

THE WITNESS: They have -- I don't know what they call them -- but they are like stands in between.

Q Partitions?

A There would be your partition. They even have plastics that go up to the ceiling. I don't bother with that. They generally partition each instrument, depending on the studio. The one I use is small, so you do get leakage onto each other's tracks. That is why I say I will take one of these guys off and put him on later because of the leakage.

THE COURT: An instrument that will be picked up pretty much by itself on its own track?

THE WITNESS: Yes. That is the idea, anyway. It is not always that easy. Quite often it does not work out that way. But if it is a good take, it does not matter. In addition to miking each instrument, you like to mike the whole room.

THE COURT: You are kind of acting as the conductor?

THE WITNESS: It is like the director of a movie.

THE COURT: You hear the whole thing?

THE WITNESS: Yes.

THE COURT: I go it. Go ahead.

BY MR. BERGEN:

Q Now, after you get these basic tracks down of the various instruments that you have just described, then you go in with additional instruments and lay those instruments down on the tracks?

A Yes.

Q You are the one who decides what additional instruments you will put down on these additional tracks?

A If it is my session.

Q If it is your session?

A Yes, if I am visiting somebody else, it is their prerogative, but on my sessions I choose everything.

Q Now, what happens next after you have laid down the additional tracks that you feel you want on the record?

A What happens then?

Q Yes.

A Well, then I have to go to the studio with the engineer and we have to try and make sense out of all the 16 tracks with all these different people playing, and the idea is to reduce the 16 tracks down to two tracks to make a stereo record, and that is called re-mixing,

and that can take as much time as the recording. It is called remixing, and it is to reduce the 16 tracks down to two tracks.

Q Your two track left and right stereo?

A Yes.

Q What is the next step after you have mixed it down to the two tracks? What happens next?

A Then you listen to it and see what you have got. One of the problems or responsibilities of the engineer, more than the producer, although I have to remind him at times, is to make sure that the different sessions are compatible, meaning, on a Monday night if they record at one level -- it is up to the engineer what level they take it down -- on Tuesday night if he forgets to match it, when you come to the re-mix, there may be one track that is ten times louder than the other for no reason, because nobody touched their knob when you mixed them. If it is all done around the same period it will all sound pretty much the same, but if you do it at different DBs, different decibals, you have to see that it is done properly. And when you get into the master room, you can alter the whole record again in the master room, which I have done on a few records. It is just like virtually remixing the whole thing.

Q Going back to the re-mixing, you worked with and supervised the work of the engineer on the re-mixing?

A Sure, the engineer, to give you an analogy, is like the cameraman on a film, and I would be similar to the director, and so worked hand in glove with him all the time, and neither one conflicts with the other, and we rely on each other. I rely on him to tell me if he got the film, if the sunlight was all right, and he relies on me to say yea or nay, what I want or don't want.

THE COURT: I think we will break for lunch.

MR. BERGEN: Fine, your Honor.

(Luncheon recess.)

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AFTERNOON SESSION

2:15 p.m.

MR. SCHURTMAN: Your Honor, we have agreed with defendants counsel, subject to your Honor's approval, to call a witness out of turn for some very short testimony.

THE COURT: All right, fine.

MR. SCHURTMAN: Mr. Dyczko.

Your Honor, may Mr. Kanzer conduct the examination.

THE COURT: Delighted, sure.

MR. SCHURTMAN: Thank you.

W I L L I A M H. D Y C Z K O, called as a witness by the plaintiffs, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. KANZER:

Q Mr. Dyczko, would you state your residence address for the record, please.

A My residence address?

Q Yes.

A 589 Upper Boulevard, Ridgewood, New Jersey, 07450.

Q By whom are you employed?

A RCA Corporation.

Q And what is your position at RCA?

A I am a lawyer in the RCA Law Department assigned to the RCA Records Division of RCA Corporation.

My title is Senior Counsel, International Operations.

Q Are you a member of the New York Bar?

A Yes, I am.

Q Are you testifying pursuant to a subpoena?

A Yes, I am.

Q Are you familiar with a company named Adam VIII?

A Yes, I know of it, yes.

Q Has RCA prior to February of 1975 done business with Adam VIII?

A Yes, it has.

THE COURT: You better speak up a little bit, please.

Q Could you tell us what the nature of that business is, please.

A Well, Adam VIII, which is one of Mr. Morris Levy's companies, is engaged generally in the record business and of late has been involved in the sort of packaging or album that is apparently at issue in this trial, so-called TV mail order package, and that is a business that exists today in our industry.

Q Could you tell us what, if any, services RCA performed for Adam VIII prior to February of 1975?

A I don't know them all, Mr. Kanzer, but generally I can state that it has had dealings with Mr. Levy for packages of this type where either RCA sold him what we would call finished goods and did the fulfillment, the mail order fulfillment.

Q Did there come a time in or about February of 1975 when Adam VIII requested that RCA act as its sales fulfillment organization in connection with an album of songs recorded by John Lennon?

A Yes.

Q Did RCA in fact act as the sales fulfillment organization for that album?

A No, it did not.

Q Did RCA give any reason to Adam VIII for not acting as its sales fulfillment organization?

A Yes, it did.

Q Could you tell us what that reason was?

A Well, this may perhaps call for a little narrative, your Honor.

I think it was February 11 or 12 a telegram from Capitol Records, Inc. was directed to my attention.

It was not addressed to anyone specifically in

RCA, but simply to RCA Records, Inc., although we are a division, we are not a corporation.

It simply said that they understood that we were about to perform pressing, that is to say, manufacturing or mail order fulfillment services for a Levy company and it referred to a so-called Lennon album.

This was brought to my attention. I knew nothing about it at the time. I called the most likely people in our organization internally who might have knowledge of any such prospective contract and based on their responses to me, I then spoke with both counsel for Mr. Levy and counsel for Capitol Records to ascertain just what the problem apparently was, or attempt to ascertain.

MR. GRUMBACH: I didn't hear. You said you spoke to counsel for Mr. Levy and counsel for whom?

THE WITNESS: Capitol Records.

Q I show you this document, which has been admitted as Plaintiffs' Exhibit 41D and ask whether this is a copy of the communication which you received from Capitol.

A It certainly does. But I have the original here, if I may refer to it.

Q Certainly.

A Yes, it is.

Q You testified that you communicated with counsel

for Adam VIII.

Would you be able to tell us to whom you spoke and what was the nature of those conversations or communications?

MR. PRETTYMAN: I think he said counsel for Mr. Levy.

THE WITNESS: I did say that, but --

THE COURT: Who did you speak to?

THE WITNESS: I spoke to Mr. Kanzer on the telephone.

THE COURT: All right.

Q In as much detail as you can recall, could you relate what was said in that conversation and who said what to whom?

A Well, I told you about the telegram and I probably read it to you or certainly gave you a complete summary of it and I asked you what Mr. Levy or Roulette or Adam VIII's position was as to that, because obviously there seemed to be a conflict developing.

My recollection is that you told me that you had the rights from Mr. Lennon to do -- to produce, manufacture, distribute and sell the album, and I told you at that time -- obviously I had no reason to dispute what you were telling me -- but that I would be in touch with the

attorneys for Capitol Records to see what their position is and explain the reason why they sent the telegram to RCA and that after that I would talk to our management, the RCA Records Management, and tell you our decision.

Q Was there any discussion that you had with me in that initial discussion you have just referred to about any indemnification from Adam VIII to RCA?

A If not in the first, my recollection, Mr. Kanzer, is that you and I spoke at least twice on the telephone in the next day or two, perhaps three times, and that you did suggest, or offer on behalf of your client, an indemnity to RCA Records in view of this claim from Capitol Records.

I told you I would certainly consider that and that I would discuss that with the management who was involved in this area of our activity and mention your offer of indemnity and that we would, of course, be back to you as soon as we could.

Q I believe you testified that you also had communications with attorneys for Capitol.

Could you relate what those communications were, first identifying to whom you spoke or communicated at Capitol, and as best you recall, who said what to whom?

A I kept no record of these, your Honor, because this was a very fluid situation. We get 40, 50 calls a day

and most of them somehow relate to administration of contracts or prospective agreements.

I believe I called Bob Carp, Robert Carp, who is Senior President and General Counsel of Capitol Records.

Bob, as best as I recall, referred me to a member of his staff, which I more or less anticipated he would do. I doubt that he would have been working on this particular matter.

Therefore, my substantive conversations I am sure were with Charles Tillinghast of the Capitol Records Law Department in California, and I asked simply, "Mr. Tillinghast, what is this all about? Why did you send this telegram, what is this all about?"

And as I recall, he said, "Well, you know that Mr. Lennon is our artist."

I said yes, I think most everyone in the business knows that Mr. Lennon is probably under contract today," meaning February of last year, "to Capitol Records. I have been told by counsel for Adam VIII that they have attained rights from Mr. Lennon to do this album. I have no reason to not believe what I am being told by another member of the bar."

And he said -- and I asked him would he check to see if there was any waiver of their exclusivity on this

particular album.

He said he would, although he also told me that Mr. Lennon had requested permission of Capitol to do this album, in effect, to waive the exclusivity of their artist contract, and that they had declined, and then he simply reasserted what the telegram said, that if we were to proceed they would hold us accountable and make us a party to a litigation, they intended to preserve their rights.

Q Do you recall whether in your conversation with Mr. Tillinghast there was any discussion about Mr. Lennon having delivered a tape to Mr. Levy or Adam VIII?

A Somewhere in that one or two days of telephone conversations, Mr. Kanzer, with you, with Mr. Tillinghast and with my own internal people, I developed the impression, and I think it may have come from Mr. Tillinghast, that Mr. Lennon had delivered a tape.

He did not describe it any further than that. But he was very clear in his statement to me that Capitol Records had not given Mr. Lennon a waiver on this particular album.

Q Was there any reason why RCA refused to accept an indemnity from Adam VIII and to go forward as a fulfillment agent for Adam VIII in this package?

THE COURT: Can I hear the question again,

please.

(Question read.)

A Yes, there was.

We are a major corporation. We are involved in litigation, like many major corporations. That is really not our business, to be involved in litigation, except where we are trying to syndicate our own rights, and here what appeared to us is that we were being told by each side that they had rights which seemed to be irreconcilable in this situation, at least for us to attempt to make a decision on the merits.

If we had had a contract, Mr. Kanzer, with Adam VIII in existence to render these fulfillment services I think at the very least I would have expected an indemnity from you in view of the telegram, but in the absence of that point in time of having a contract with you, we had to look upon your offer of indemnity in the light of is it sufficient additional inducement to enter into a contract, considering the amount of business, the financial benefits to RCA, as against probably being involved as a party in a litigation, and tying up, well, the securities and whatever, and quite frankly, we did not feel that the offer of indemnity constituted such an additional inducement to go ahead.

pm

Q How much business does Adam VIII do with RCA?

A I have no idea. I know we do business with Mr. Levy through his various companies. We have done business prior to this situation and subsequent to it. But I am simply a lawyer here. I don't have those figures.

Q Has RCA done business with Adam VIII subsequent to February, 1975?

A As far as I understand, yes.

Q So far as you know is the Lennon package the only time RCA has declined to do business with Adam VIII?

A So far as I know. I don't know that that is a complete answer to the question, but so far as I know.

Q I show you this document which has previously been marked Plaintiffs' Exhibit 56 for identification and ask whether this is a letter which you have signed?

A Yes, it is.

Q Could you explain the circumstances under which you sent this letter?

A Yes. I believe in our last telephone conversation about this matter back in February I had reported to you by telephone the decision that RCA Records made and

you asked me to confirm that in a letter, which I did, by way of this letter.

MR. KANZER: I offer that letter.

THE COURT: What is the number?

MR.KANZER: 56.

MR. PRETTYMAN: No objection.

THE COURT: Received.

(Plaintiffs' Exhibit 56 was received in evidence.)

Q In the final paragraph of Plaintiffs' Exhibit 56 you state that in reference to the decision of RCA it was in no way an attempt to make a judgment on the merits and was taken solely to avoid becoming involved in litigation. Is that statement true?

A Yes, it is.

MR. KANZER: I have no further questions.

THE COURT: Any cross examination?

CROSS EXAMINATION

BY MR. PRETTYMAN:

Q I am Barry Prettyman. I represent Capitol Records and EMI Records.

In any of these conversations that you had with anyone at Capitol did anybody use any coercion or pressure or threats or anything that you would consider improper in

terms of their approach to you in regard to this matter?

A No, sir.

Q Was the decision that RCA made a unilateral decision based on the facts as it best understood them, rather than as a result of any agreement with anybody?

A It was a unilateral decision.

Q On RCA's part?

A On RCA's part.

Q Now, as I understand it, after you received the telegram and after you spoke with Mr. Kanzer, you initiated the call to Mr. Carp?

A Yes.

Q And upon his advice you either then called or transferred over to Mr. Tillinghast?

A That is correct.

Q I believe you said at one point that you asked him to check to see whether there had been any waiver of the exclusivity? Did you assume that since Mr. Lennon was with Capitol that it was an exclusive contract?

A Yes, basically, Mr. Prettyman, most companies know generally what the outstanding people are under contract to other companies, and we generally had a basic general knowledge that Mr. Lennon had been and publicly was still under contract, although I didn't know at pre-

cisely that moment in view of the situation the details. So my first question was, "Would you please, Mr. Tillinghast, tell me whether you still have Mr. Lennon under exclusive contract?"

He said he would, and did, and informed me that they do.

Q As I understand you, when you first asked him that you replied that he would check, but that Mr. Lennon had requested permission to waive his exclusivity and that had been denied?

A Mr. Tillinghast told me that, yes.

Q Did Mr. Tillinghast after that call you back as a result of your request?

A No, I think I called him back, because since Mr. Levy had been a customer of ours we felt obligated to try to come to a decision as quickly as we could, and because of the distance and so forth, I spent most of my time on the phone in the matter.

I believe I called him back. He, in the meantime, had checked and reasserted what he believed to be his company's rights.

Q He, in effect, confirmed what he told you before?

A Yes.

Q So you had two telephone conversations with him?

A Yes.

Q And in each instance you initiated it?

A Yes.

Q And in each instance you told us as best you can recall the content of those conversations?

A That is right.

Q You mentioned that you are a sales fulfillment organization?

A Not really. It is one of the things we do. We basically are a record company, but we do have a record club, which is a mail order fulfillment, meaning simply the way you deliver the records to your customers. And this so-called TV mail order business has grown in recent years. It has been discussed here in the testimony I heard this morning. Solicitations are made on radio and TV and then the actual delivery of the product to the individual consumer who orders via radio or TV receives it in the mail from what is called a fulfillment organization, and that is something we do, along with other companies.

Q Your company delivers directly from what we call the retail fulfillment centers?

A I really don't know, even though I work for the

company. In this sort of business, Mr. Prettyman, we would deliver by mail only to individual consumers.

MR. PRETTYMAN: Thank you very much.

THE COURT: Anything else?

CROSS EXAMINATION

BY MR. BERGEN:

Q Are you involved in licensing contracts for the licensing of masters?

A On the international side primarily -- may I ask this gentleman who he is?

MR. BERGEN: I represent Mr. Lennon and Mr. Seider.

A (Continuing) Yes, I am involved basically internationally, but I have been involved in the licensing of masters domestically also.

Q Are licensing contracts normally in writing?

A Yes, they are.

Q Do you know of any original recordings, and by original I mean not previously released recording that have been sold through television mail order?

A No. It is conceivable. Our own company may have done that, but I don't know of any. It is conceivable.

Q When you know that an artist is signed with

another record company, is there some kind of a system of getting legal clearance that you go through if he is going to record for you, if he is going to record for RCA?

A No, we would not do that, and I can't speak for other companies. The only time we would approach another company for an artist of theirs is, say, in the original Broadway cast or motion picture sound track, where as a matter of courtesy most companies will let an exclusive artist of theirs perform for whoever gets the rights to the original cast.

When you say legal clearances, most of our business people in the negotiating area are generally aware of who is under contract to whom. The business people are astute enough to make that preliminary inquiry, and then if there is some question, they may come to the law department. There is no legal clearance.

Q Mr. Dyczko, when an artist does appear in like a Broadway show or a movie and a waiver is given of the exclusivity, is that waiver in writing?

A Yes.

MR. BERGEN: Thank you.

CROSS EXAMINATION

BY MR. GRUMBACH:

Q My name is George Grumbach. I represent

Apple Records, Inc. of New York. You testified on direct that you got a hold of one or two people atRCA who you thought would have some knowledge of the substance of the telegram, can you tell me who those people are?

A Yes,one person's name is James Head. He was the primary person. He is what we call the sales representative on Mr. Levy's business with RCA Records and would obviously be the one most likely to know.

Q Is he employed by RCA?

A Yes, RCA Records.

Q Where is his office?

A At 1133 Avenue of the Americas, New York City, 10036.

Q Who is the other person?

A The other person was his boss at that time, the vice president in charge of this activity, David Heneberry.

Q Is he no longer with RCA?

A He is, but this activity is no longer under his umbrella.

Q Is he at the same address?

A Yes.

Q I would like you to go back to your telephone conversation with Mr. Kanzer, both of them.

Try to tell me as accurately as you can recall what Mr. Kanzer told you about the rights that he claimed that his client, Mr. Levy, or Adam VIII had and how he described these rights? Tell me in as much words as possible.

A Well, his words were that he was satisfied that his client had obtained the rights to do this album, meaning, the Lennon performance aspect of the album, from Mr. Lennon, and that is really all he said.

Q Did he describe to you anything about how long RCA would be fulfilling from this album?

A No.

Q Did he say anything to you that this would be over very quickly and you would not have to worry about it after that?

A No, I don't recall. Basically these things do have a relative short term, up to a year, even less. There is an initial promotional effort, and perhaps a follow-up. No, Mr. Kanzer was very, very clear and positive and affirmative in stating that he was satisfied that his client had obtained the rights. But beyond that I don't believe there was any elucidation.

Q Did he tell you how his client had obtained the rights?

THE COURT: You say these things, you mean the

TV promotions?

THE WITNESS: Yes.

THE COURT: What is their normal duration?

THE WITNESS: Oh, a year, your Honor. As I say -- I am talking about our own experience; I don't know what the plaintiffs had in mind here -- but basically there would be an initial heavy promotional effort, such as the commercials.

THE COURT: Speak out to the whole room.

THE WITNESS: That you probably all have seen on TV. There would be a follow-up, depending on the response to that. But basically, some of these packages have been sold over a period of at least a year, longer.

Q Did RCA put out the Elvis Presly package?

A I don't know which one you're referring to, but we have put packages of Elvis out, yes.

Q Mr. Dyczko, did you make any notes of your conversations with Mr. Panzer?

A No, I did not. I brought whatever I had in the file. It was mostly by telephone, except for one letter to Mr. Kanzer and the telegram from Capitol. And as I said earlier, we get so many phone calls a day that have to do --

THE COURT: You don't need to repeat.

Is there anything else?

When you say a year, were you measuring from the time RCA gets involved in these packages?

A No, I am thinking of the period of sale and promotion. That does not have to do with any particular ;ackage, but some have gone that far.

Q Is it Mr. Head who would be familiar with other work that was done for Adam VIII by RCA?

A Yes.

MR. GRUMBACH: Thank you.

BY MR. PRETTYMAN:

Q Was RCA in communication with any company other than representatives of Mr. Levy and representatives of Capitol before making this decision not to go ahead?

A No.

REDIRECT EXAMINATION

BY MR. KANZER:

Q Is it possible to have an album promoted on TV and sold in less than a year?

A Yes.

Q Do you know any packages that, in fact, were done in less than a year?

A I could not name any for you. Again, it is a matter of the initial response, Mr. Kanzer, and what I am really saying in court is based on just conversation, not

about this particular situation, but generally with the commercial people. So, again, I am the lawyer and not a marketing man.

Q Are you familiar with how a TV package works in terms of how it is advertised and where?

A In the general sense, that the promotion is usually by way of a TV commercial or radio commercial which directs the consumer to respond to a particular address with his money.

THE COURT: I think the witness has indicated he is peripheral to the market. If you want to get marketing customers and marketing patterns, why, you ought to get somebody who is in that field specifically.

MR. PRE[illegible]AN: No further questions.

THE COURT: You may step down.

(Witness excused.)

MR. BERGEN: I call Mr. Lennon again.

J O H N W I N S T O N O N O L E N N O N, resumed.

DIRECT EXAMINATION (Continued)

BY MR. BERGEN:

Q This morning before we broke for lunch you testified about a contract that you and the Beatles had with EMI. Was there a subsequent contract, in other words, subsequent to the first one, that is, the contract that is in

effect today?

A Bryan Epstein, who is the Beatles' late manager, meaning he is dead, made another contract in the mid '60s.

Q And that is the one that is in effect today?

A Yes.

Q Going back to the recording process, is it your practice between the recording of the initial tracks and the over-dubbing of other instruments to take some kind of a break between the two?

A Generally between the basic tracks I put in violins or saxophones; I take maybe a week or so or less to decide what to put on and also to arrange it with the arranger, meaning a guy that can write the music for me, and between the re-mixes and the masters I also usually take a break because by then I have heard them so many times I can hardly hear them, I have to take a break before mastering.

Q After you have completed the re-mixing and you take this break, what is the next step in the recording process?

A Well --

THE COURT: May I interrupt you? I am probably not using the right technical terms, but you have testified about the initial recording.

THE WITNESS: Yes.

THE COURT: You told us about that this morning. And then you said at some subsequent point you might add instruments?

THE WITNESS: Yes.

THE COURT: And you might do that by adjusting and so forth, whatever is necessary to reduce the 16 tracks to the two track stereo?

THE WITNESS: That is a major operation. It is almost as important as the recording itself.

THE COURT: Now, I am a little uncertain. The break that you mentioned, is that between the initial recording and whatever instruments are to be added?

THE WITNESS: Because I have to decide what I am going to do, whether it is going to be saxophones, violines, or whatever, and then I got to get a guy to write music and I have to tell him what I want. I not only want to think what I will want, but to decide what they play, and then I have to have the guy write it for me, and then I will go in.

THE COURT: After you have made that decision and the person has written the music, then you bring the other instruments in and you do your additional recording?

THE WITNESS: Yes.

THE COURT: Then after that you are ready to do the --

THE WITNESS: Mix down.

THE COURT: Mix down.

THE WITNESS: Or the re-mix, yes.

THE COURT: Just a second.

THE WITNESS: There can be re-mixes in between; there can be re-mixes of the original rhythm tract before you ever put the trumpets on. I can take a rough re-mix, you can take it straight on to a tape, which is how they used to do it in the old days, instead of having an engineer set up a whole 16-track system.

But recently I have been using the cassette. I can take a little cassette, which is even crummier than the one they had here today. I would not even plug it in, and just use so that I know what I want to do in the future.

Q Between the over-dubbing and the re-mixing, is it your practice to take some kind of a break?

A That is the time when I need more of a break from the basic recording to the over-dubbing. I don't take so long a break, but just enough to work out what I want to put on, and I am still pretty open.

By the time I put the violins or whatever I over-dub on, I need a bigger break. You just get

deaf listening to them. You don't know whether you are singing in tune any more: you can't tell what is going on: you have to get away from it.

Q Then you go into the re-mixing and this re-mixing is a constant process?

A Just then I was talking about re-mixing.

Q But the re-mixing is something you do?

A If you don't like ti a week later you re-mix again. I have never done an album where I have not re-mixed a few tracks some time. You are lucky to get one re-mix a night. If you are lucky, you get it in the first six, but not too often.

Q What is the next process, the next step after the remixing?

A After the remixing? Presuming you are still happy with it ten days later or whenever you come back to listen to it, you take it upstairs, or wherever the place is, to cut the master.

Now, generally, I have the mastering guy take a listen to it while I am away or while I am not listening to it just to see if there are any big problems, like did we put too much on and it will not make a record.

I don't know how to explain it. I know that sometimes you can put too much noise on a tape and it sounds all right to your ears, but the machine just won't take it. It happens rarely, but the guy will usually confirm it's all right, the stuff will cut okay.

Q The master --

A Then we go upstairs and make a master lacquer out of it.

Q The mastering engineer is somebody separate from the engineer who you work in the studio with on the remixing?

A What generally happens is about the night before or a day before you master it you take the 15 inch tape that we will call the master for now and you run it through any

comments the engineers have from the mastering room, like maybe this one won't cut or this one is down a DB. Then you have to run it through an EQ master, which means equalized master, meaning you equalize all the tracks to make each track compatible with the other track.

Q Equalize the sound?

A Yes, of all the tracks. It's like you have to put it through a filter to make everything sound pretty much the same.

Then upstairs you start mastering it.

Q When you say "upstairs" you mean wherever you cut the lacquer masters?

A Yes, where you cut the lacquer, yes.

THE COURT: Before you have the lacquer master cut you end up with a two-track tape, is that right?

THE WITNESS: Yes.

THE COURT: And do you call that the master tape?

THE WITNESS: Yes. You see, the problem being that -- they call 16 tracks master tapes, they call the 15 inch master. You know, I don't know where they stop calling things masters. The 16 track is a master, the 15 inch is a master, an EQ copy of the 15 is a master, only they call that a copy master.

THE COURT: Wait a minute.

You have described a 16 track tape.

THE WITNESS: That would be called a master tape, too.

THE COURT: Let's list the different kinds of tapes, because that will help me.

You have the original 16 track tape.

THE WITNESS: Yes.

THE COURT: And then --

THE WITNESS: Then you first, after various things you do to them, the first one where you have strung them all on one piece together, it is 15 inches, and that would be referred to as the master.

THE COURT: That is the two-track tape?

THE WITNESS: Yes, the stereo.

THE COURT: And you say 15 inch tape. You are talking about --

THE WITNESS: 15 IPS.

THE COURT: 15 IPS.

THE WITNESS: Yes.

THE COURT: Not that it makes a lot of difference, but the 16 track tape, has that got an IPS?

THE WITNESS: Yes, they do. I am not sure if they go at 15 or not, because I just learned something in

the last year, which is the 30 IPS for the 16 track, and I learned that, as it happens, from Jesse Ed Davis, who was here this morning, and I used it on Walls and Bridges and possibly on the latter part of Rock 'n Roll, meaning I had the 16 track going at 30 IPS, because that made the record sound better and cut -- it was even better than 15.

So I am presuming that the original 16's used to go at 15 IPS, meaning the faster you could go -- if they could get it to go 60 it probably would be better still. It's just a matter of the machines won't do it.

THE COURT: You take your 16 track tape and current practice is to put that on to a 15 IPS two-track tape?

THE WITNESS: Yes.

THE COURT: And both of those are sometimes referred to as masters, right?

THE WITNESS: Yes.

THE COURT: Then it's this --

THE WITNESS: Final master.

THE COURT: It's the final master, the 15 IPS two-track tape, which is used to cut the lacquer master, right?

THE WITNESS: Yes. What I am saying, for instance, on the Rock 'n Roll, because there was one set of

recording sessions in Los Angeles with a different set of machines, anyway, but also a different amount of people playing --

THE COURT: I will tell you what.

You better --

THE WITNESS: Say it that way?

THE COURT: Yes. I will hear you. Everybody needs to hear you.

THE WITNESS: On the Rock 'n Roll album, not only was the usual process of recording, but the Los Angeles tapes, what we call the Spector tapes, were recorded with 28 people playing live at once. I have never done that before, but that is what we did, and it was an extraordinary noise.

When I came to finish it off, I only used five or six people. I had this 15 inch tape, but the difference for the engineer and the master in the cutting room was incredible, between all those people playing and only a few people playing.

THE COURT: How did you get it from 28 to 5?

THE WITNESS: No. I mean the Spector tapes were done with a lot of musicians in the West Coast. When I finished it off on the East Coast I used half that amount of musicians. I didn't want to use that many.

THE COURT: You mean you did that by cutting off tracks?

THE WITNESS: No, no. Let's say the West Coast tapes are there and the East Coast tapes are here.

Now, no matter -- they were recorded on the West Coast with some 28 people playing. Mine were recorded here with say eight. Now, I did all the usual things, mixed them down, mixed them down.

Now, I have the two sets together. Now somehow I have to get these eight people and these people to be able to cut a master without them sounding ridiculously different. So there the engineer -- we had to make an EQ version of the 15 inch, although we had one recording from the West Coast.

Say the first track was from the West Coast and the second track was from the East Coast, et cetera, et cetera, all through the album.

Then the engineer upstairs had to equalize the two, and th ook us a long time.

THE COURT: Let me just get a note. The Spector tapes in LA, 28 people.

THE WITNESS: That is a rough estimate. There were a lot of people there.

THE COURT: The songs that were recorded in New York by you were recorded with --

THE WITNESS: About eight.

THE COURT: -- about eight musicians, and they were supposed to go on one album, and so you didn't want to have this appearance --

THE WITNESS: A great difference. Even if we used the same 28 on the East Coast, there more than likely would have been a great difference anyway. The difference can be between studio A and studio B. The whole room can make the tape sound different.

Like in the record plant itself, the studio B downstairs is more bassey than studio C, which is the one I use.

So if I have recorded one track in studio B and then I take it to studio -- make another track in studio C, they have to equalize the sound. They are never exactly the same no matter how they try.

THE COURT: You mixed an EQ tape?

THE WITNESS: Yes.

THE COURT: Is EQ short for equalize?

THE WITNESS: Yes. They sort of squash it.

THE COURT: Sometimes you are saying that after you get your original 15 IPS tape you have to remake that?

THE WITNESS: You recopy it and it is called EQing it, is the easiest way of putting it, and you change

the sound on it or you equalize them.

THE COURT: All right. Go ahead, Mr. Bergen.

BY MR. BERGEN:

Q Do you ever make the master, before you make a lacquer master, a master recording, do you ever put it on a 7-1/2 IPS tape.

A I would only use 7-1/2 for reference or for a demo. They make demo records.

Q So your practice is that when you make that master it is on a 15 IPS tape?

A Yes. I have never heard of any other way of doing it.

I mean, if you lost all the other tapes and you only had a 7-1/2, then maybe you would use the 7-1/2.

Q Going into the making of the lacquer master, can you describe that process?

A Well, the guy -- the engineer in the mastering lab, he does the it track by track. You know, he just doesn't put the 15 tape on and copy it straight on to a machine. He goes through it track by track. I can say, the producer or the artist can say, "Can we have more base on this track, a little less treble on that track," and so and so and so, and also the engineer will suggest that "Look, you have too much base on this, it won't cut, I would

like to roll off a little boom," as they express it.

There are many things you can do, well, one has to do in the mastering room. I can't describe it any different. You go through a track at a time and then you go through the timing of the tracks and then you go through the final, final decision, that's the right order, and the fade out, if there is no complete -- if there is no finished musicial ending on the track, you decide the fade out.

Q When you say the order, you mean the order of the tracks?

A Yes.

Q The sequencing of the tracks on the record.

A Yes.

Q Is that important?

A That is as important as -- well, it is a very important process, because one tune can ruin another. Sometimes you can have a nice track that sounds good, but if you put it behind something -- well, simply, if you have two slow songs, sometimes it gets boring.

So a basic sort of rule of the game is if you have a fast one put a slow one. That's a simple way of putting it.

But there are lots of subtle differences. Maybe the horns -- putting them in order is like putting a show

in order, a Broadway show.

MR. SCHURTMAN: Your Honor, can I request --

A You have to build up -- you have to hold the listener for 20 minutes a side so he doesn't turn the record off. It is very important which song follows which song.

THE COURT: All right, Mr. Schurtman.

MR. SCHURTMAN: Your Honor, can I request that the witness define what he means by track in this instance.

THE COURT: I can't hear you.

MR. SCHURTMAN: Can I request the witness define what he means by track in this context, because I think he is now using track in a different sense.

THE COURT: All right.

Are you using --

THE WITNESS: Track, I mean each cut, meaning each song on the album.

THE COURT: So track sometimes means a song and track sometimes means a track, right.

THE WITNESS: Yes, yes.

Q When you talk about the order you are talking about the order of the songs in the album?

A Yes. I mean, it is one of the most painful processes, because sometimes you think you have a great

track or song and then you put it next to something and it sounds disgusting and you have to go through the whole process again of maneuvring.

It is like a jizsaw puzzle, only there is no set answer, only you know the answer. So you can put the puzzle together and it seems to fit, but when you look at it it is wrong, so you have to pull it all apart again and do it again.

THE COURT: Maybe I misunderstood. You said a few minutes ago that the engineer making the lacquer master does it track by track.

THE WITNESS: Yes.

THE COURT: There did you mean song by song or did you mean track by --

THE WITNESS: Song by song.

THE COURT: Song by song, because by that time what he has is the two track tape anyway, he hasn't got the 16 tracks?

THE WITNESS: Oh, no. 16 tracks are forgotten about now. You don't hear about that again, unless somebody damages the master.

THE COURT: Okay.

THE WITNESS: Then you would have to remix the whole thing again?

THE COURT: All right. Go ahead, Mr. Bergen.

Q While the engineer is working on these different songs or tracks in the cutting room, do you work with him and supervise his work?

A Sure, I am there.

Q When you say "you", when you are referring to you, that the order of the tracks or songs may not sound right, you mean you as the artist whose record it is?

A Yes, or the producer.

Now, some people -- you know, some artists are just produced by people and they never know what is going on, you know. I mean, they just go in and sing and they go away.

But I produce my own records too, so I play two roles.

Q After this process of cutting the lacquer masters is finished do you listen to the lacquer masters when they are completed, you know, like on an initial round.

A Well, we usually listen to one in the room, sort of a rough lacquer. I don't know if there is a real term for it, a rough laquer. If I have okayed it I take it home with me maybe and play it at home to see what it sounds like on a normal speaker and then they will call the record company or vice versa and they will cut what is called a

white label, which is the first time they put it into plastic, because up to then it is made out of metal or something, and they put it into plastic.

Normally I will be sent the white label copy too to listen to, to okay it, because in between the mastering of it and the plant where they print the records, turn them into plastic, they can also make a mistake or something can happen.

So the usual procedure is to send me or the producer a white label, it is called, which is the first plastic record, and you play that to see if it is what you made in the mastering room.

THE COURT: And that is made from the stamper, right?

THE WITNESS: Well, I don't know those expressions, stamper. I just know they send a plastic record back, the first one like a real album that you can bend.

THE COURT: In other words, after the lacquer master is made then you are not involved with the mechanics of the pressing and all.

THE WITNESS: No.

THE COURT: But you do get the first plastic record?

THE WITNESS: Yes. A test pressing it is called.

Q The white label is called a test pressing?

A That's the word, yes, and then you listen to that to see if it is okay, and that's usually when you say "Okay, go."

Q When you say "go" the lacquer master or the parts from the lacquer master are then sent to the plant and then the actual pressing process starts.

A Yes. All I know is I say "Okay on that," because I make the masters for this country and Britain, because EMI allows me to. I don't know whether it is in the contract or not, but they allow me to make the masters in this country.

It is sometimes the practice just to send tapes to each country. But they allow me to make my own masters for Britain and Europe too, if there is time and there is no special rush on or it isn't Christmas or something. So I cut my own parts, which is not normal, but I do my own European masters, too.

Q You are talking about the lacquer masters?

A Yes. I make all the masters, for Japan, too, if they let me, because they can ruin it after you have spent weeks making it, they can ruin it.

Q In October of 1973, Mr. Lennon, were you involved in a recording session in Los Angeles?

A I am sorry. I didn't hear the date.

Q October of 1973, were you involved in a recording session in Los Angeles?

A Was that when it was, October? I thought it was here in October.

THE COURT: '73.

A Is that when I first started the Rock 'n Roll? I am not very good on dates.

Q Do you recall that at some point you began recording sessions with Phil Spector?

A Yes, just after I finished an album, yes.

Q Do you recall what the album was that you just finished?

A I just finished Mind Games. I had an album called Mind Games and I just finished that, or round about just finished it, you know, couple of months maybe.

Q Can you identify Phil Spector?

A Phil Spector is a producer who I have worked with before and he is a famous producer. That's about all.

Q Of popular records?

A Some were popular.

Q What type of an album was this that you were working with Mr. Spector on?

A It was going to be just oldies but goldies.

Q Can you tell us what you mean by oldies but goldies?

A That's what-- sort of everybody understands oldies but goldies means old records. You know, it usually refers to old rock and roll records.

Q Were these old rock and roll records that were popular in the 1950's?

A Generally, and early sixties.

Q When you and Mr. Spector were working during these recording sessions, had you selected any particular rock and roll songs that you were going to record on this album?

A I had a vague idea of what I wanted to do.

Q But did you ever sit down and actually make a list, you know, we are going to do --

A Phil and I had many lists, yes, but generally, we would decide the night before which one we were going to do the next day, although we must have gone through every rock and roll song we ever knew together.

Q At this time were you aware of a lawsuit involving the song Come Together?

A Well, I wasn't aware of it until they suddenly brought it up in the middle of the sessions. I mean, I knew it had been going on about five years previous. I

hadn't heard about it for four years or something.

Q Was Come Together a Beatles song?

A Yes.

Q Can you tell us what that case was about?

A It was something to do with me singing "Here Come Old Flat Top," it being similar words to You Cant Catch Me, where he says something about a flat top in it, and there had been -- I don't know. They had been in Court with it for years, or not in Court, the case had been pending for I don't know how many years.

THE COURT: I know it has come up before. The title of your song was?

THE WITNESS: Come Together.

THE COURT: Which song?

THE WITNESS: The Beatles song was Come Together and the other song was called You Can't Catch Me.

THE COURT: The Chuck Berry song.

THE WITNESS: Yes.

THE COURT: Okay. Go ahead, Mr. Bergen.

Q Was Come Together copied from You Can't Catch Me?

A No.

Q Did there come a time in October of 1973 when you were about to become more involved in this lawsuit?

A It was about the third or fourth day of the Spector sessions and they were going rather well and somebody called me -- I don't know who -- and said, "the Come Together lawsuit is on in New York, you know, you are supposed to come."

I said, "Don't do that. You know, I am in the middle of working. You know I don't do anything other than work when I am working. I can't think about something else tha happened years ago. Just go and make a deal, leave me alone, you know."

And that's what they did. They came back and said, "It is all right."

MR. SCHURTMAN: Your Honor, at this point could we start getting into the he said, I said phase that Mr. Levy was asked to comply with?

THE COURT: I don't think that at this point it is all that important.

MR. SCHURTMAN: We are getting there.

THE COURT: What is the importance?

MR. SCHURTMAN: I would like to know who told him about the lawsuit and to whom he said he ought to go and settle it.

THE WITNESS: I don't know, but the message would have been received --

THE COURT: I don't think that is of any importance. The lawsuit was settled and there was an agreement in writing. There will come a time when we have to get into all that detail, but not here.

MR. SCHURTMAN: All right.

Q The songs that you and Mr. Spector were planning to record, had they been recorded by other artists originally and been hits?

A The whole idea of the album was to record other artist's songs, because for most of my career I have recorded my own songs or songs written by me and my friends in the Beatles.

In the early days we used to record other people's songs and then we only recorded our own and I just wanted to, for a change, sing songs that I sang when I was a teenager, which is generally what the songs on this album turned out to be.

Q Did you ask somebody to try to settle the Come Together lawsuit?

THE COURT: He said that.

MR. BERGEN: I am sorry.

THE COURT: We have the agreement. It is in writing. Let's get past that.

Q Do you know how long the recording sessions with

Mr. Spector went on?

A No. They will be dated, you know, the studios will have the dates we were in there.

Q Did there come a time when the Spector recording sessions stopped?

A They did stop a couple of times, but then they picked up again, and then finally they stopped altogether.

Q Do you know approximately when that was?

A No.

Q Do you know how many songs had been recorded at the time that they really stopped for good?

A When it all collapsed I think about nine had been done.

Q Can you recall the names of some of the songs that were recorded at that time, up to that point?

A Well, I mean the nine is all we ever recorded with Spector. That was the maximum we ever recorded.

Q Yes.

A You want me to remember all the tracks?

Q No.

Can you just tell us as many as you can remember.

A Well, I can remember the ones we played this morning. Bonie Maroney, Angel Baby, Sweet Little 16, Just

Because, Here We Go Again --

THE COURT: We had that listed, Mr. Bergen.

MR. BERGEN: Okay.

THE COURT: I think we have a list.

Q Was Mr. Spector taking the tapes of these songs home every night with him?

A Well, I found out subsequently that he was, but I didn't know that until one night they weren't available.

Q Did you try to get the tapes back from Mr. Spector?

A Yes, but it is very hard to get through to him if he doesn't want to -- doesn't answer phones. He is an eccentric, you know. I just couldn't get through to him.

Q Do you know whether Capitol tried to get the tapes back from Mr. Spector?

A I think Al Coury from Capitol finally got them back. This is six months later.

Q In the meantime, while you were trying to get the Spector tracks back, were you working at all?

A Well, for a period I just kept trying to get people in touch with Phil. There was a rumor that he had had this dreadful car accident and with Phil one never knows if it really happened or if it didn't happen, if it just happened in his head.

So I spent a lot of time trying to find out just what actually had happened and I couldn't get any answer.

So then I got bored and I started making an album with Harry Nilsson. I didn't feel like starting my own album again because I was a bit disappointed or depressed that Phil had run away with the tapes.

This was the first time I had never finished an album.

Then I went in and made an album with Harry Nilseen, where I produced him. You know, I was still working without being the artist, as it were.

Q What was the name of that album?

A Pussy Cats.

Q Again, between that time when you worked with Mr. Nilsson and getting the Spector tapes back, did you do any additional work on your own?

A Oh, yes.

Then I made Walls and Bridges.

Q Did you get the Spector tapes back before you started the actual recording sessions of Walls and Bridges?

A Yes. I booked the time for Walls and Bridges and I booked the musicians to come -- the ones that I wanted from LA to come from LA, and it seems to me three or four days before I went in to record Walls and Bridges, suddenly

I had all these Spector tapes, there was 30 boxes of Spector tapes.

So I just thought, well, I am not going to cancel Walls and Bridges to go looking through all these tapes, so I will do Walls and Bridges first and then I will deal with the Spector tapes.

Q Who brought the Spector tapes back to you?

A Capitol.

Q Do you know whether Capitol paid any money to get the Spector tapes back from Mr. Spector?

A I think they had to pay him, because somehow he had been paying the costs. I don't know how he did it, but he did something, and they made some deal with him.

Q When you say "the costs," you mean the recording costs?

A Yes.

Q Who normally pays the recording costs for your recordings?

A EMI.

Q If they are recorded here in the United States, who pays them?

A Well, I guess -- well, if the studio sends the bill to Capitol maybe Capitol will pay them and then EMI gives them the money. I don't know how they do it, but EMI

pays.

Q Has that always been the practice under yours and the Beatle agreement with EMI?

A Yes.

Q Do you recall when you went back to the Spector tapes and started working on them again.

A Sometime after I had finished Walls and Bridges.

Q Do you recall what you did with the Spector tapes when you went back to them after Walls and Bridges?

A First of all, we had -- they weren't too clearly marked on the boxes, so we had to keep -- we had to listen to a lot of them to find out which was supposed to be the good take, and by "take" I mean you sing and play a song maybe 20 times, 30 times, and somebody is supposed to mark on the box with all these versions of the same song on the which is the good take.

So it wasn't too clear on the Spector sessions, so I had to listen to all the boxes to find out the good versions of the songs. That's the first thing I did.

The second thing I did was sort of decide which ones I could -- how much work I had to do on which and how much singing I had to do, and then when I decided that I started either singing the whole thing again or singing just a couple of words.

I mean, I don't know if you want these details.

Q Yes.

Can you tell us what you did?

A Well, on one track there might be about five or six lines where I am not satisfied with my performance and what I will do is I will just wipe out five or six lines and keep, say, 80 percent of the original voice and just drop in five or six lines.

Q In other words, you can sing in some additional lines?

A Yes, wipe -- I can even wipe one word if I don't like it and drop in one word, and I started doing it with the tapes that I had left to do on, meaning I just started resinging the ones -- the better ones, just dropping in a word or dropping in a few words, and some of them, like Angel Baby or Just Because, I had to sing the whole thing again.

Q Were all of the nine Spector tracks -- were you able to use them?

A Well, one of the nine, somehow in the deal we let Spector have it, and it was called Born To Be With You, meaning I had made the tape with him, but somehow or other we allowed him to keep it.

So that was one gone. So that made it eight.

One other was the song Phil and I tried to write together and I didn't consider it good enough or finished enough, although we did record it.

So that was another gone. That left seven.

Of the seven, I worked on those seven as best I could, resinging them or maybe adding a tambourine or something. I have forgotten how many I finally used on the album, but I reduced it to about six or five. Some of them were just beyond repair, you know.

Q Do you recall when you first met Morris Levy?

A As far as I remember, the first time I ever met him was on the 8th of October, whatever year we met.

Q Can you tell us what the reason was for your meeting Mr. Levy on the 8th of October?

A Well --

MR. PRETTYMAN: Can we specify the year, your Honor.

THE COURT: 1974. I think we all know that.

A Harold Seider told me that Morris wasn't too happy about the situation about me not doing the songs or whatever I was supposed to do for that agreement we had made and he wasn't too happy about Ya Ya on Walls and Bridges.

Q You are talking about the Coming Together settlement when you refer to the agreement?

A Yes. He wasn't too happy and it would be sort of cool if I came along and explained what happened to the Spector tapes, because he was apparently upset that I hadn't put out the rock and roll album, and so it was up to me to go and explain what happened, I am sorry, it doesn't normally happen to me, but somehow or other I lost the tapes, and here I got them back and all that happened is -- you know, it is a little later than it was supposed to be, but here is what you wanted anyway.

MR. SCHURTMAN: Your Honor, is this what Mr. Seider told Mr. Lennon or what Mr. Lennon told Mr. Seider? At this point, I will have to start objecting.

THE COURT: You were talking to Mr. Seider, right?

THE WITNESS: Mr. Seider said, "Come and explain to Morris Levy what happened to the rock and roll album," and I said, "Yes," and I came and explained it to him.

Q Was one of Mr. Levy's songs -- you referred to Ya Ya.

Was that one on the Walls and Bridges album?

A Yes, and he wasn't too happy about it.

Q Did this meeting take place with Mr. Levy?

A Yes.

Q This was on October 8?

A Yes.

Q Do you recall who was there?

A Morris Levy, myself, Hal Seider, May Pang, Bernard Brown and Phil Cahl, and maybe persons came and said hello and went away at the table, you know. But they were the ones that were sort of sitting down all the time, most of the time.

Q Who is May Pang?

A She is a secretary.

Q Was she a secretary who worked for you?

A She worked for me, yes.

Q Who had she worked for before she worked for you?

A Appel and Abkco.

Q Appel and Abkco?

A Yes, meaning she worked for Abkco and then when Abkco was no longer with us she worked for Appel.

Q Where did this meeting with Mr. Levy take place?

A At his Club Cavallero.

Q And that is here in New York City?

A Yes.

Q Did you have dinner there that night?

A We didn't eat.

Q You didn't eat?

A I had already eaten.

Q Where did you eat that night?

A Benihana.

Q And who had dinner with you at the Benihana?

A Harold Seider, Bernard Brown and May Pang. I don't think there was anybody else.

THE COURT: Keep your voice up.

THE WITNESS: Oh, yes, sorry.

Q Mr. Lennon, I show you Defendant's Exhibit HHHH and ask you if you have ever seen that before.

A Well, you know, you showed it to me. That's the only time I remember seeing it.

Q Is that the American Express charge slip for the dinner you had at the Benihana on October 8?

A I suppose it is, yes.

MR. BERGEN: Your Honor, I offer this in evidence.

THE COURT: Any objection?

MR. SCHURTMAN: Can I look at it?

Let me ask one question on voir dire.

VOIR DIRE EXAMINATION

BY MR. SCHURTMAN:

Q Mr. Lennon, I refer you to the back of this American Express slip.

A Yes.

Q Can you identify the handwriting on it?

A I know it is not mine and I can guess it is May Pang's.

Q Do you know when Miss Pang put this on the back?

A She would have done it that night most likely. That's my usual habit. The accountants have gotten me into that habit.

Q Did she check it out with you?

A Well, she would have done it in front of me while we are doing the thing. I can't even work out the 20 percent, so I get somebody else to do it for me, for the waiter.

Q Do you know what she meant by saying, "John Lennon, President of Lennon."

A Probably non Music. If she has put Lennon as the company that means she is talking about Lennon Music. If she put President, she is probably talking about Appel. I don't know. It is just for the accountants, so they know what we were doing.

MR. SCHURTMAN: No objection, your Honor.

THE COURT: Received.

xx (Defendant's Exhibit HHHH received in evidence.)

Q You all went to the Club Cavallero together, the court of you?

A Yes.

Q You all sit together with Mr. Levy?

A Yes.

Q Was Mr. Cahl there?

A Yes.

Q Mr. Phil Cahl?

A Yes.

Q Can you tell us what took place at the meeting, and please, if you can --

THE COURT: Look, let's take our break very quickly before we get into this.

MR. BERGEN: Okay, your Honor.

(Recess.)

Q Mr. Lennon, beginning at the beginning of the October 8, 1974 meeting, can you tell us what you said, what was said, and as best you can, identify the people who were saying whatever was being said.

A Well, we sat down at the table, that is, myself, Morris Levy, Phil Cahl, Hal Seider, May Pang and Bernard Brown.

Q Can you tell us where the various people were sitting?

A As far as I remember, I was sitting here (indicating), May Pang was sitting there, Harold Seider was there, Bernard Brown, and then Phil Cahl, and sort of next to me, I think, was Morris. It was like, what do you call, a horseshoe, like that. And I sat there and they just sortof went around like that.

Q Can you tell us what was said?

A Well, I guess we said a few preliminaries, everybody, "How do you do, nice to meet you," and I can't remember what was said about that. All I was interested in saying what I had to say about the tapes. I was very nervous, because I did not know the man. And I heard he was annoyed at me. So I told him as best I could all about the Phil Spector tapes and what had happened and how it was not a plan or a plot, that it was just what you call an

act of God, and I hadn't meant to do anything to annoy him, that it just so happened, and it never happened to me before, and I am sure it will never happen again, that I was upset about it, and that I had so much material I could use, that I thought of making a maxi-single or an EP, or a package of six singles. My main thing was to tell him, "I am sorry,you didn't get what you are supposed to get, but this is why."

I explained that for about three-quarters of an hour or an hour. And he said something like, "Well, that is all very well and good, but I am out of pocket."

And he started writing some figures down on a bit of paper. I don't know what they were, maybe $250,000 or something. He had this idea because of the time lapse he was out of pocket. I could not follow the reasoning, but if he thought he was out of pocket, he was out of pocket as far as I could see.

Q Did he give you any figure what he was out of pocket?

A I am only guessing, I have this $250,000. It can be a dream. I have no idea. I don't know where I got it from. I know he said he was out of pocket, and the reason is because of the time lapse between when he was supposed to have these songs of his recorded and

when they actually were recorded or released.

Q Now, when you were telling Mr. Levy about this maxi single, can you explain that in a little more detail, please?

A Well, a maxi single is just another word for extended play EP, which is something they don't do in American, but they still do it in Europe and England. I was thinking of all combinations, how to best utilize the tapes that had already been made without sort of having to go back in the studio. That is what we finally did, but without having to spend more money and also to get it away.

I wanted to sort of clean it up without having to do any more. But EP did not work and nobody was interested in EP.

THE COURT: What do you mean EP?

THE WITNESS: Extended play. It is like a 45, but it plays 33, but you can have three saxs on one side and two on the other, and it is not an LP and it is not a single, and it is something that is quite common in Europe. The Beatles once put out a EP. It is along those lines that I thought of what to do with it. I have forgotten where we are.

THE COURT: You are testifying about what you

were telling Mr. Levy and what he was saying to you at the very initial stage.

THE WITNESS: Well, all I can remember him saying is being out of pocket.

THE COURT: Where did you go from there?

Q This took about 45 minutes to an hour?

A I told the whole story about Phil Spector. After I had done all the story, telling him about when and how, I was in this situation, then he said he was out of pocket, you know, and then he started writing on paper. You will have to excuse me. I cannot remember what happened next.

Q Was there any reference made by you to possibly selling the album on television?

A Yes, I thought of that a long time ago.

THE COURT: Did you say anything at that meeting about selling the album on television?

THE WITNESS: I think I said something about it, yes, because I was talking about the 7-Up ad. There was a famous commercial for 7-Up, where a guy comes on in a leather jacket and says, "Hi, remember me." I wanted to do a parody on that for the Rock and Roll album, whether it went out in a special way or not. I already had that idea for a commercial.

And also I had been toying with the idea of a Spector-Lennon album that had gotten so much publicity in 1973, and the critics were lying in wait for it, and by the time we finished it they were not going to be hot on it.

I was thinking that perhaps I could put it straight on TV and avoid the critics and avoid going through the usual channels. And Morris told me that is what he does, "I am an expert at that." I am paraphrasing whatever words he said. He said that is his business. I don't know whether I said that before he said, "I am out of pocket," or after.

Q Was there anything else said about television? You said that Mr. Levy said, "Well, that is my business," or, "That is what I do?"

A I don't remember any conversations. I know the thing went on, and he and Harold Seider did some talking at the other end of the table, and I was writing songs down and thought of showing them to May Pang.

Q Can you tell us what else happened at the meeting as best you can remember it now?

A Well, Morris said he would like to do it, you know, put out the album on TV, and I said, "That is cool with me as long as it is all right with the record

company."

Q Did you mention the name of the record company?

A EMI. My policy all the time is then whenever they get into figures or talking about business, I just tune out, and to be polite, and then Morris and Harold would go on, and Morris would sort of look at me to make a conversation, and I would indicate, "Don't talk to me; I am already in the studio," and I was writing down songs, which meant to say I was not listening any more.

Q Was there any discussion about getting EMI's permission as to what you just testified about?

A All I had to say is, "I am with EMI. You have to ask EMI." I didn't have to say anything more or think about it any more.

Q Was Apple Records mentioned at all?

A I don't know either way if they were mentioned.

Q Did you tell Mr. Levy that you were the president of Apple Records?

A I would have no reason to.

Q Did you say anything to Mr. Levy that you considered that the Spector transaction was dead material?

A No.

Q Had the Beatles or you as artists ever had what you referred to as dead material?

A One thing the Beatles and me never like, the idea of having a lot of material that is crummy left in the vaults, for when you die in an airplane crash, which is what a lot of rock and roll people do, then they release this material and they put strange people playing on it, which appear to such artists as Buddy Holly. So we did not make it a practice to put a lot of stuff on tape. The Beatles may have two tracks that were never released, and one of them is from 1962, and I have one, and there is the Spector tape, so now I have three that they could release if I died, which I would hate to have released.

Q Was a company called Adam VIII Limited mentioned during the course of the meeting?

A I never heard that name until we got to the farm, because it was written at the farm. Adam was written on a big silo that you put wheat in.

Q Up at Mr. Levy's farm?

A Yes, two big silos with Adam written on them.

Q Was there any discussion about a price for any proposed album, a price that the album was going to be sold at?

A I can't say yea or nay; I didn't take down any notes of it. They might have been talking price down at the other end. I can't say I didn't hear them talking

about price, but I really don't know. I physically tuned out.

Q Was there any discussion about song titles during the course of the October 8th meeting?

A Yes.

Q Can you tell us what that discussion was?

A Well, discussion is a trite sounding word for it.

Q Was there any discussion about song titles?

A Be-Bop-A-Lula, Long Tall Sally and various other songs from the past and writing out lists.

Q Lists of songs?

A Possible songs, yes.

Q Can you recall anything else about the October 8th meeting?

A Well, I think I told May Pang, "Start getting these records together."

Now, some of them I already had, but I was not about to go through my collectionsorting out Be-Bop-A-Lula. I said,"Just get them all anew."

And Phil Cahl leaned over. Phil Cahl said, "I can help you. We got all those recordings. I know all the sheet music. I can get it for you."

I said, "Okay, you deal with May," because

Phil Caohl seemed to be the equivalent of May Pang in the Morris setup.

So they both talked. I didn't mind who got the records. I wanted them for reference.

Q Did you discuss with Mr. Levy what your royalties were with EMI?

A Offhand I don'tknow now unless it is the figure they keep talking about in this deposition. I don't know what I get.

THE COURT Did you talk with Mr. Levy about it?

THE WITNESS: No.

Q Did you say to Mr. Levy in words or substance that "EMI will do anything I want because my contract is going to expire in January of 1976?"

A I said I can't see there being too upset about it, because why would they care as long as they get what they want, and they are not going to be mean to me, because the contract is coming up, yes.

Q Can you recall anything else that took place during the meeting?

A Well, I vaguely remember Mr. Bernard Brown -- it is hard to remember, because everybody has been talking about it -- I just mainly remember me talking my bit and

then Morris saying he was out of pocket, and I sort of tuned out. Once I relieved myself of the apology, I just relaxed.

Q Do you recall how it broke up? How it finished?

A Not really, no.

THE COURT: Can I ask you this, that settlement of the original lawsuit, do you recall there was an agreement for you to record three songs?

THE WITNESS: Yes.

THE COURT: I think there was to be You Can't Catch Me.

THE WITNESS: That was one of them, yes.

THE COURT: And then two others to be selected?

THE WITNESS: Yes. May I just say that Angel Baby, which is one of my favorite songs, anyway, at the time I was going to record, if I was, then I found out that he owned it. I thought great.

Q In the months after that agreement what did you do to prepare or whatever to carry out that agreement?

THE WITNESS: I was recording Angel Baby anyway. I was on the West Coast and I heard that it belonged to Morris. And there was You Can't Catch Me. I was quite happy to record. I am a big Chuck Berry fan.

THE COURT: Youwere recording Angel Baby with Spector?

THE WITNESS: Yes. And You Can't Catch Me with Spector. And so that was two. It was easy to do. So there was no problem with fulfilling the contract.

THE COURT: Did you,in fact, record Angel Baby and You Can't Catch Me as part of the Spector records?

THE WITNESS: Yes.

Q And then what about the third song? Did you decide on a third song?

A It hadn't been decided, no, and we never did finish.

Q Did there come a point during the evening of October 8th that you invited Mr. Levy to come to the Record Plant to hear the Spector tapes?

A I don't know if Iinvited him that night, but I remember Harold said, "You better let him hear, because then he is going to believe."

So whenever I asked him, I don't know. The idea was for him to hear this Angel Baby and You Can't Catch Me so he will know I was not kidding. How does he know I was not lying to him at the table? I suppose that is what it was.

Q At any time during the evening of October 8th

did you say to Morris Levy, "We have a deal."?

A No.

Q At any time during the evening of October 8th did you say to Mr. Levy, "This will be the fasted darned package I ever did and we are going to move as quickly as possible to wrap it upand get it done?"

A No.

Q Did you ask Mr. Levy to listen to the Spector tapes so that you could get his opinion on those tapes and how the tapes sounded?

A No. I played him the tracks that belong to him and a couple more, because I was not going to say, "Well, now, get out, you have heard your two songs."
So I played him a few of the Beatle tracks, Sweet Little 16 and Bonie Maronie, to show him that the album was underway and it had some good stuff on it.

Q Did you at any time during the night of October 8tn say to Mr. Levy, "Capitol and Apple will be glad to get the recording costs, that it is an overall good situation, that it cleans up the mess, that it takes dead masters and makes them earn money, and it is good overall and it will be the first time an artist is putting new recordings in a sense on the TV tube?"

A No.

Q At any time during the night of October 8th did you say to Mr. Levy, "Capitol and Apple would be glad to get the recording costs back; it's an overall good situation, it cleans up the mess we got with Morris; it takes dead masters and makes them earn money and it's good overall and it will be the first time an artist is putting new recordings in that sense on the TV tube?"

A No.

Q At any time during the night of October 8th did you say to Mr. Levy in words or substance "That this could possibly get -- by being a solution to the whole mess, he said this can get Capitol their money back, this would take dead masters that were not going to see the light of day and they could earn a lot of -- and they could earn the money back for Capitol; Apple would be happy, he'd be happy, I'd be happy?"

A No, I was not really worried about Capitol getting their money back, because that is their problem. They made enough money out of me over the last ten years. I would be happy if everybody is happy, if Morris is happy and Capitol is happy, then I am happy.

THE COURT: The question is, did you say any of those things?

A They are sort of paraphrasing me, saying

if they are all happy, I am happy. If everybody is happy, I would not have to be sitting there talking over dinner with people I don't know, about subjects I am not familiar with. I am just happy to make the records.

THE COURT: Did you say anything in general to the effect that "If everybody is happy, I am happy?"

THE WITNESS: Yes, in the same kind of breath as, "You will have to talk to EMI. If they are happy, I am happy." I don't care how the records go out as long as everybody is happy and everybody gets what they need out of it.

THE COURT: But do you recall saying anything about Capitol getting its money, going into that detail?

THE WITNESS: I might have said this is the most expensive album I ever made and talked about overspending that amount on an album, but I am not worrying whether Capitol gets its money back. They had millions out of me. I am only talking about $200,000. It is a lot of money, but not for the business we are in. But I don't care to waste money, and there was a lot of money wasted, and I was ashamed of what happened to the tapes.

THE COURT: Are these things that you mentioned at that dinner?

THE WITNESS: I would have said how I felt about

the tapes and I did not like wasting money, all that money, yes, and my explanation to Morris of why the whole thing collapsed.

Q Did you say at any time during the course of the October 8th meeting, "I really would like to do this: I think this is a great idea: I think resolves all our problems here?"

THE COURT: It seems to me, Mr. Bergen, Mr. Lennon had told us his memory of the meeting, and I don't know that it is terribly useful to keep reading one or another of the specific versions and say, "Did you say this?"

Let's move on.

Q Do you recall the next time you saw Morris Levy?

A The next day, October 9th.

Q Was October 9th your birthday?

A Yes.

Q Do you recall where you saw Mr. Levy?

A I think he came to the Record Plant to listen to these tracks.

Q Was there any discussion at the Record Plant about the Spector tapes?

A I don't remember. It was a weird day for a

session and I can't remember much; I just remember they had a big spread or something for my birthday, and birthdays are something I try to avoid. I try to work so they won't harass me about "Happy birthday," but there was the spread and people coming and listening, and I don't remember discussing anything. I just played the tracks when they arrived there.

Q Did Mr. Levy invite you to go to the Club Cavallero on that night?

A I don't know whether he invited me or whether it was going to be a surprise party and he told May and the others about it. I can't actually remember it. Maybe he did. I don't know.

Q Did you go to the Club Cavallero that night, the night of your birthday?

A Yes.

Q Were there a lot of people at the Club Cavallero in your party?

A Well, I did not go with 20 people. I got down there with May Pang and Harold Seider. At the Club Cavallero there were a lot of people, and some of them were from the Record Plant and others were just eating at the club. I don't know who was a guest and who belonged to the party.

Q Did there come a time when Morris Levy invited you to come up to his farm?

A Yes. He invited me a couple of times to go to his farm.

Q Did you finally go to Mr. Levy's farm?

A After a lot of discussion I finally said, "Okay, I will go."

Q Can you describe what the discussion was?

A Well, can I just say it in my own words?

THE COURT: Yes.

THE WITNESS: When I meet people, even my own lawyers, they want me to go to dinner with them and they want me to go to dinner with their wives and see their children, and Morris human, you know, he has got friends and kids. So he wanted me to go to his farm. I get these requests all the time, to go to people's places. If I said yes all the time, I would be somewhere else but my own house, and I refuse and refuse. The first time he asked me, I had a nice respectful reason not to go, which was I was going to spend some time with a contemporary, Mick Jagger, in Long Island.

The second time he asked me, I thought, well, I have another respectable reason for not going, and I said, "I got a lot of musicians coming in on Monday and I always

rehearse with them over the weekend at the studio." I rehearse at the studios so engineers can get the feel of it and the musicians are more relaxed than they are in a hotel room. And they are so bored in the hotel. And after meeting with Jagger, I came back from that weekend, and he says, "Come next weekend."

I says, "I can't come; I am working."

He says, "You can work on the farm."

I said, "I can't work. I don't want my musicians going all over the farm, drinking and eating. They would think it is a holiday." They are like children; you have to herd them in. You can't let them loose. Then it is not their responsibility; it is my responsibility. They are to rehearse. He said, "They can rehearse there."

I said, "They got instruments and they weigh a ton."

He says, "I will get a van or something. We will take care of it."

So I gave in. I said, "We want to record."

He said, "You can record up there."

I knew I could use a cassette, so I didn't have much of an excuse. And, anyway, I gave all the polite excuses I had not go go up to the farm without saying,

"Look, Morris, I don't want to go to your farm. I am busy. Forget it."

And so I finally said, "Yes."

Whatever I brought up as an excuse not to go he would give me a reason why it would be all right. So I just finally says, "Okay."

And it was arranged and somehow we managed to go up there and we rehearsed and came back on Monday.

Q Do you recall when you went up to the farm? What day of the week?

A I remember it being a Thursday, because Morris said he always goes up on a Thursday, and I thought it was great to only have a three-day week.

Q How did you get tothe farm?

A Morris drove me up there.

Q Who drove up with you and Mr. Levy?

A Eddie Mottau and May Pang.

Q Now, can you tell us what happened at the farm?

A Well, we arrived there and -- I don't know.

Q Did you get up there Thursday evening?

A It is only an hour or two hours away, something like that, and we just sort of settled in and waited until the rest of the musicians came the next day, and there were a couple of people there, and I was surprised to seeing

people.

Q Do you know who any of these people were?

A No.

Q Did you rehearse during the course of the weekend?

A Yes.

Q And you were rehearsing the songs that were going to be played during the sessions the following Monday?

A Yes, sir.

Q Do you know how long approximately you rehearsed during the course of the entire weekend?

A Well, we could not have started until Friday, and I know somebody did not turn up until late Friday, either the pianist or Klaus Voorman, and whoever was there the next day, and I think we started rehearsing. For about two days we rehearsed. We had breakfast, and then we would rehrease an hour or two, and then somebody would yell "Lunch," which is another thing that never happened in the studio. People were called during the middle of the session. We would go and have lunch, and after lunch we would come back and rehearse. We would rehearse until dinner time, and sometimes we rehearsed after dinner. I can't remember. I seem to remember we rehearsed a lot.

Q Do you recall when you left the farm?

A Sunday afternoon in time to be back for the session on Monday.

Q During the course of the weekend did you discuss any album with any of the guests at the farm?

A I don't remember saying much to any of the guests. They were sort of staring at me as I rehearsed or they may have said something. There were children; there were a couple of gray-haired men there; there seemed to be 20 people; some were staying there; some of them were passing through. I was thinking about the album and being as polite as I could under the circumstances.

I really was holding my breath so I could get onwith the job. I don't remember small talk.

Q Do you recall telling anybdoy during the course of the weekend that you were doing an album for Morris Levy?

A No.

Q Did you tell any of the musicians that you were doing an album for Morris Levy?

A There would be no reason to tell the musicians anything.

Q Or any of the Morris Levy companies?

A No.

Q Do you recall at any of the meals that were

eaten any discussion about your doing an album for Morris Levy?

A No.

Q Do you recall any discussion about the price of the album?

A No.

Q Did you go in and record the remaining tracks on the Rock and Roll album the following week?

A Yes, on Monday.

Q You started on Monday?

A Yes, I generally start albums on Monday. I don't know why, but I do.

Q I show you Plaintiffs' Exhibit 35, which is the Rock and Roll album. Can you tell the Court whether you had any particular reasons for performing each one of the songs on the Rock and Roll album?

A Yes, there is a pretty good reason for each one.

Q Can you tell us, please?

A Be-Bop-A-Lula was one of the first songs I ever learned, and I actually remember singing it the day I met Paul Mc Cartney. I was singing at the church and Mc Cartney was in the audience. Stand By Me was one of my big albums in the dance halls in Liverpool. That was

Benny King number. And the same goes for Be-Bop-A-Lula. I knew these songs as a child.

Ready Teddy was a sort of guitar type song written by Little Richard and recorded by him.

You Can't Catch Me was the Morris Levy song but it was Chuck Berry, anyway, so that was good enough reason to do it.

Ain't That A Shame was the first rock and roll song I ever learned. My mother taught it to me on the banjo before I learned the guitar. Nobody else knows these reasons except me.

Do You Want To Dance we had at some jam sessions in the West Coast featuring numerous stars and not worth mentioning the names of.

I tried to get the Reggae version, which is a kind of rhythm, and so I thought I would try it myself.

Sweet Little ly, I have been singing that, which ia Chuck Berry number that was also an old time favorite of mine.

Skippin' & Slidin' was the B side of Long Tall Sally, which is the first Little Richard song I ever heard and was also recorded by Buddy Holly, so that covers a little of both. It was a song I knew. It was easier to do songs that I knew than trying to learn something

from scratch, even if I was interested in the songs.

Peggy Sue, I have been doing that since I came out, and Buddy Holly did it, and, in fact, I used to sing every song that Buddy Holly put out.

Bring It On Home To Me is one of my old title favorite songs, and, in fact, I have been quoted as saying I wish I had written it, I love it that much, and I was glad to be able to do it.

Send Me Some Lovin' is a similar kind of song, and that was done originally by Little Richard, again one of my favorites, and also Buddy Holly.

Bonie Maronie was one of the very earliest songs, along with Be-Bop-A-Lula, and I remember seeing it the only time my mother saw me perform before she died. So I was hot on Bonie Maronie. That is one of the reasons.

Also, I liked Larry Williams, who recorded it.

Ya Ya I did because it was Morris',and it was a good song. It is an easy song.

Just Because I did because Phil Spector talked me into it.

Q Do you know how long the rock and roll sessions album took in recording sessions?

A From the 21st to the 25th.

Q After the original recording sessions were

finished did you over-dub the album?

A Yes, the musicians went back to Los Angeles or wherever they came from, and then I brought in the home players and we did the sax parts, the horn parts.

MR. SCHURTMAN: Can we fix a date for that?

THE WITNESS: I can't give you the date; it was after the musicians went home on the 25th,and maybe they came in the week after. I don't know. You would have to check.

Q Do you recall when after the farm you next saw Morris Levy?

A Only because I heard it in court. Apparently I saw him on Monday. I don't recall.

Q After you finished the recording session?

A I don't know.

Q Did there come a time when Morris Levy asked you for a tape of the rock and roll album?

A Well, he asked me a few times but I can't tell you when. He asked me quite a few times for tapes, and I kept saying, you know, "They are not finished." I don't sort of like crummy tapes being handed around. But when I finished, I gave them to him. I did enough work on them, so I was not embarrassed by listening to them or having them outside the studio.

Q Do you know what stage the album was at when you gave the tape to Mr. Levy?

A Well, I had re-sung anything I was going to re-sing on the Spector songs, so it was at that stage. I can't name the stage.

Q Was it after you finished the recording sessions?

A After I finished the new recording.

Q The October recording sessions?

A Was what after?

Q When you gave Mr. Levy this tape?

A I don't know, was it? I don't know.

Q Do you recall the circumstances of how you finally gave Mr. Levy this tape?

A Well, I think I was in his club.

Q The Club Cavallero?

A Yes, and he was asking me again, you know, and I virtually didn't have -- you know, what could I say.

So I said, "What do you want, a cassette or a 7-1/2," and he said about playing it in the office and giving him a 7-1/2. So I got somebody to call the record plant, and I don't know who the somebody was, but I got somebody to do it and they called and somebody came over from the record plant with a tape and gave it to him.

Q When you gave the 7-1/2 IPS tape to Mr. Levy, what purpose did you give it to him for?

MR. SCHURTMAN: I object to that, unless he told Levy what the purpose was.

THE COURT: Sustained.

MR. PRETTYMAN: What did your Honor rule? I couldn't hear.

THE COURT: Sustained.

Q Did Mr. Levy tell you when he asked for the tape that he was going to use it to put out an album?

A No.

Q And when you gave it to him, did you intend that

he use it to put out an album?

MR. SCHURTMAN: Objection.

A I had no idea he was going to do that.

THE COURT: I will let it stand. I think it is pretty obvious. I mean, not obvious, but I think this is the purport of the witness' testimony.

Q Was this --

THE COURT: You never said to Mr. -- let me ask you this: Did you say to Mr. Levy that he was authorized to use this tape to make a record album?

THE WITNESS: No, because even a pirate record, I would prefer him to have a good one.

MR. SCHURTMAN: What was that?

THE WITNESS: Even if it had been a pirate record, I would prefer them to have a 15 inch one that I approved.

Q Did you do any work on the album, the rock and roll album, after you gave the tape copy, this 7-1/2 IPS tape, to Mr. Levy?

A Yes.

Q Can you tell us what work you did on the album?

A Well, on that section of the album or the whole album?

Q The whole album.

A Well, I had to equalize both recordings, like I tried to explain earlier, which is the West Coast and the East Coast recordings.

I edited some of the Spector tapes down, becase all of them were miles too long, so I cut out chunks of them.

I finalized the version of You Can't Catch Me, I finalized my version of You Can't Catch Me in the manner in which Phil Spector had rough mixed it the night we recorded it.

Q You mean the night in 1973 when you recorded it?

A Yes. That's one thing I did.

MR. SCHURTMAN: Your Honor, may we fix dates, please? The witness said he can't even remember when he delivered the tape.

THE WITNESS: I didn't deliver it. Somebody else gave it to him.

MR. SCHURTMAN: When he caused it to be delivered. It will be very difficult to cross examine him unless we have some dates established.

THE COURT: I get the drift of this that the witness doesn't know, doesn't recall too well dates, right?

THE WITNESS: I know my birthday, obviously, and

I know the day before I met Morris, and I finished the album on the 25 recording because I have it written on the album, but it tends to mesh over. It is two years ago.

MR. SCHURTMAN: Could we at least establish the month in which he did certain work.

MR. BERGEN: Your Honor, I would be willing to stipulate when I think the tape was given to Mr. Levy.

MR. SCHURTMAN: All right. Let's get that.

MR. BERGEN: November 14.

THE COURT: Will you stipulate it was November 14 when the 7-1/2 inch tape was given?

THE WITNESS: You see, if I ask for a tape from record plant they will have to date it.

THE COURT: Is there a record of that?

MR. BERGEN: I believe I can show Mr. Schurtman a document. The best I can reconstruct from that document from the Record Plant, it appears that that was the day a 7-1/2 IPS copy was made and delivered.

It doesn't say where it was delivered, but from all we have been able to piece together, that seems to be the day.

MR. SCHURTMAN: May I see the document?

All I am trying to find out is if the work he did afterwards in fact came after the delivery of the tape.

THE COURT: Right. That is the whole point of the question.

THE WITNESS: Oh, yes. I can say that, yes, because it is different.

MR. BERGEN: Your Honor, I am referring to -- we might as well put it in the record.

THE COURT: I take it that there is a master tape in the way we discussed earlier --

THE WITNESS: Yes.

THE COURT: -- from which the final record was made that you were shown a few minutes ago, right?

THE WITNESS: Yes.

THE COURT: Does that master tape still exist?

THE WITNESS: Yes.

MR. BERGEN: I have it right here in Court.

THE COURT: I take it you have listened to that master tape recently.

THE WITNESS: No. I see, I know what is on my final master and I know the difference without listening.

THE COURT: All right.

THE WITNESS: I started to say about You Can't Catch Me. I can tell you the differences between the two You Can't Catch Me's without listening to them, because I know what I did. That is where I was when they stopped me.

THE COURT: Why don't you just go ahead and explain.

THE WITNESS: If I can just concentrate on the one track, I did lots of work on all the tracks to varying degrees after this date where I gave him the 7-1/2. I did the kind of work I described this morning that you do to get to the master stage and into the master room.

Now, on You Can't Catch Me, the night we recorded it Phil Spector made a beautiful cut. He copied the intro to You Can't Catch Me, which was very catchy, and he tape copied it, and in the middle of the song he cut it and the whole song began again. So we have this intro, a version, and then the intro again, which is a special kind of way. It was done with bongos -- just drums and voice it was, the intro.

So it was a brilliant piece of editing.

Now, all along I intended to do that edit again. We had Phil's rough cut, so we knew just about where the cut was going to be. And not until I got in the master lab did I do the cut.

The engineer knew the cut because he had been on the West Coast with me. The same engineer that was on the East Coast was on the West Coast with me. So we left that until the very last minute.

Now, I know on the tape I gave Morris I hadn't bothered doing that cut. I didn't have to do it. There was no reason. It was a cut that was going to be done at the last minute because we knew what it was, and I did it. And so my You Can't Catch Me is how we originally planned it and their You Can't Catch Me is a different version.

I can go into the other tracks of, why I dropped the track or why I didn't or why I raised the base or faded it out quicker because there was too much time on each side. All the Spector tracks went on too long. I had to try to cut them all in half. I sliced Sweet Little 16 in half, I sliced Be My Baby in half, but it never went on any way. I still didn't put it on the final album, but it is different from the version they have. I sliced it in half.

In the cutting room I was still trying to fit the thing on, but the album was going on too long, so I took the weakest things off and threw them off.

THE COURT: You say the cutting room. At what stage was that?

THE WITNESS: This when we had the final 15 inch thing, tape, and were trying to make the lacquer from it, and this is when I finally decided at the last minute, do I want to change the order of something because it won't cut well, it ill doesn't sound good, so we can change the

order or drop the track. So that's when I did this.

THE COURT: And this is to make the absolute final 15 inch tape.

THE WITNESS: The final --

MR. BERGEN: No, the final lacquer master.

THE WITNESS: The final lacquer. Look, if I took those two tracks off, what they did was physically take them off the 15 track and they will stick them together for convenience and put them on another reel. They might stick them in the same box as the master, but it will not be on the master tape, or they might stick it on the head of the master tape. They will keep everything that I do, all the work I do, even little edits, in the master room. They will keep all the little pieces just in case I change my mind.

I mean, I have had an engineer pull a thing to pieces and then ask him to put it all back together again exactly how it was.

So they never throw anything away.

But the final artistic decision is made in that room then.

THE COURT: All right. That is in the process of making the lacquer master.

THE WITNESS: Yes, from the 15 inch tape.

THE COURT: And the 15 inch tape you are saying can be --

THE WITNESS: Cut to shreds in that room.

THE COURT: Cut to shreds in that process?

THE WITNESS: If I want it or if the producer wants it.

THE COURT: What I am wondering, we kept assuming that ultimately you end up with a final 15 inch master tape, and I guess what I am a little confused abc now is this, that if in the preparation of the lacquer master you might cut to shreds the 15 inch tape as it exists, do you then remake a final, final 15 inch tape?

THE WITNESS: No. Actually, that master can have actual splicing tape on it. You know, if I cut out a version from a song, they will cut it out physically on the real master and just stick it together and take the little piece of there.

THE COURT: So you end up with a revised final 15 inch tape, but it may be spliced and cut and all.

THE WITNESS: Yes, and then they will copy the lacquer from that.

THE COURT: In other words, at that final time you do this process of final editing of that 15 inch tape, right?

THE WITNESS: Yes.

THE COURT: And it may be cut and spliced and put back together.

THE WITNESS: Yes.

THE COURT: Then you end up with this revised 15 inch tape?

THE WITNESS: Yes.

THE COURT: And it is from that you start in and make the lacquer master?

THE WITNESS: Yes.

THE COURT: You don't make the lacquer master in bits and pieces, do you, from a piece of tape?

THE WITNESS: No. Once the engineer -- presuming everything else is satisfactory and this is the tape I want, this is the final tape, then the engineer will sort of make a little run through on each song or track and then he will sort of suggest and we will -- before he can cut it he has to make a trial run on each track and then a trial run on a whole side and then once he has got what he is going to make notes of what he is going to do to each track, like add a little, a few DBs here, or cutting something off the bottom, the rumble, and when he has finalized all that then he can just play the tape and just change the controls as the different tracks come through, different songs come through, and he can make one whole side, and then he will make another whole side, but before he makes the other side he will play this to see if it works.

You see, the lacquer he makes won't be the one they make the record from. That's just for us to hear to see if it can be cut, if the tape will go onto the

grooves, becaue sometimes the tape refuses to go onto the grooves for one reason or another, you have to adjust everything.

Soonce he has okayed that and we can play a whole side, then they say okay, we have a side. Then we go to the side 2 and do the same thing again.

MR. SCHURTMAN: Your Honor, may we just --

THE COURT: Let me just ask -- I know this may be repetitious -- what you are saying is that process when you are making a lacquer master --

THE WITNESS: Yes.

THE COURT: -- youhave this 15-inch tape and you go through with the engineer, you may cut it up and revise it right then and there?

THE WITNESS: Yes.

THE COURT: And then when you have got it cut up and revised and put back together again, then I guess maybe you play it again for yourself to see if it is okay, right?

THE WITNESS: Yes, and it is quite reasonable to make a 15-inch copy master for another country.

THE COURT: Wait a minute. Let us just take it one step at a time.

THE WITNESS: Okay.

THE COURT: In order to see that this is okay do you play over this thing that you cut and pasted?

THE WITNESS: With the pasted one, the one where you have actually made a physical change, yes, you will play it to check it.

THE COURT: Then have you told me that the engineer will make notes as to how he wants to maybe do the volume here and there?

THE WITNESS: Yes. Because of -- I don't know what the reasons are, but they are various. I mean, I know some of them. But when they go from track to track the volume can vary slightly and it has to be equalized and brought down to the same kind of level.

So he has to make a note for each track. One track you can run through without touching it, other tracks you need a whole lot of knob twiddling.

THE COURT: So he has his tape in final form and he has his notes?

THE WITNESS: Yes.

THE COURT: Then you put it on a lacquer, right?

THE WITNESS: Yes.

THE COURT: But that you are saying is not the actual lacquer master, that is a lacquer for you to listen

to?

THE WITNESS: Yes, and for him, and we run through it and see if there is anything we want to change, and if it is okay I can say -- also the thing is then to time -- it is also important, though it sounds trivial, to time the space between tracks. I mean, at the end of the last beat of a number, say it goes (indicating) -- that's the first track -- it is important how soon the next track comes in. If you leave three seconds it sounds one way, if you leave one second it sounds another. It is very subtle, but it can influence what the next track sounds like.

So that is another thing the engineer has to make a note of, how long the fade is, how many seconds, where to start, and how many seconds in between each track. Sometimes you want a long pause because it's been dramatic, you leave a dramatic pause, and things like that.

Once we say okay then, and we have done the test together, then he can put the parts. Now, I don't have to be there for him to cut the final parts.

THE COURT: In other words, after you have heard this first lacquer and you have seen if anything more has to be done, then he makes some notes or you do whatever is necessary and then the engineer is set to cut what is called the lacquer master.

THE WITNESS: Yes. The parts they call them. I don't know why.

THE COURT: Is that the same as --

MR. BERGEN: Thatis the lacquer master.

THE COURT: You have done your work by then?

THE WITNESS: I have done my work.

THE COURT: And the engineer can take it?

THE WITNESS: Yes. The only thing left for me, if it is feasible timewise for them to send me the first test pressing, plastic, they -- they generally send it to the engineer whohas cut the parts for him to see, but usually get one too or major artists will get one too to see if it is turned out the same as you thought you made.

MR. SCHURTMAN: I respectfully request that a time period be fixed. I think we can establish that everything the witness has just told you happened after the tape was delivered to Mr. Levy.

THE WITNESS: Yes.

MR. SCHURTMAN: In fact, happened in February of 1975. Can we fix that point of time?

MR. BERGEN: Sure. I am willing to stipulate that. I have a document right here that indicates that what Mr. Lennon was just describing, the process --

THE COURT: Of making the master.

MR. BERGEN: -- making the final master, the final 15, and then transferring that into the lacquer masters, was done on February 4th and 5th, 1974, and the lacquer masters --

MR. SCHURTMAN: '75.

MR. BERGEN: '75. I am sorry. -- and the lacquer masters were cut, the parts, on Feburary 6th and shipped out to Capitol, and the document, Defendants' Exhibit TTT indicates that information.

MR. SCHURTMAN: Mr. Bergen, can we stipulate that any work that was done by Mr. Lennon after the tape was delivered to Mr. Levy was done in February of 1975?

MR. BERGEN: Yes.

THE WITNESS: I don't know if I might have done something before or not.

MR. BERGEN: I mean the work that the witness was just testifying to.

MR. SCHURTMAN: Yes.

THE WITNESS: Yes. That all happened in the room.

THE COURT: That is February 4th and 5th. That is stipulated by everybody, right?

MR. PRETTYMAN: I just don't want there to be an impression that he didn't do anything --

THE COURT: No, there isn't any implication. He has testified at some length about the particular phase of the work, which we all understand, and that, Mr. Bergen, you are saying occurred, according to the record, on February 4th and 5th, right?

MR. BERGEN: That is correct, your Honor.

THE COURT: And that is agreeable to you, Mr. Schurtman?

MR. SCHURTMAN: Yes.

THE COURT: And to the other parties, Mr. Grumbach?

MR. GRUMBACH: Yes, as long as we are just talking about the work --

THE COURT: Right, we of course are. We said that.

On February 6th was what?

MR. BERGEN: That is when a lacquer master was actually cut and the parts were sent to the various Capitol plants, including being shipped to England.

THE COURT: All right.

MR. BERGEN: If I can put in these two --

THE COURT: All that is stipulated.

MR. BERGEN: May I put in these two documents, your Honor?

THE COURT: Yes, fine.

THE WITNESS: Excuse me. I was doing similar work the day before or two days before. I was working up until, you know --

THE COURT: Mr. Lennon, you better explain that.

THE WITNESS: Either the day before or a couple of days before I would be -- before you go back upstairs, as I call it, to the master you are hoping you have really done the work. You also hope that you can just go in and cut the record, but it is never true. And so a couple of days or the day before, I am not sure which, I was cutting things, cutting pieces out of songs or putting them in different order, up to the last minute. I would be listening to them reordering them with the engineer many, many times, until you almost can't stand to hear it any more.

MR. BERGEN: Your Honor, I offer Defendants' Exhibit TTT in evidence.

THE COURT: TTT are the records --

MR. BERGEN: Of the master cutting room, where the lacquer masters were cut, and this final mixing session was done.

THE COURT: We are talking about records,

not musical --

MR. BERGEN: We are talking about documents.

THE COURT: Documents. Okay.

MR. SCHURTMAN: I have no objection to the yellow invoices. I do object to the white work sheets.

THE COURT: Let me see them, please.

What is the objection to the work sheet, the white work sheets?

MR. SCHURTMAN: Your Honor, as I recall, some of the work sheets may not have been dated. It is not clear who made the work sheets. The invoices obviously went out in the regular course of business. The work sheets are partly in ink, partly in pencil. I don't know when, how and by whom they were made.

THE COURT: Mr. Schurtman, the amount on this first invoice, 4262, is $1,565.10, and I guess this was a bill to Capitol Records, right?

MR. SCHURTMAN: Yes. I don't object to the bill.

THE COURT:Mr. Bergen, it is a bill to Capitol Records, $1,564.10, right?

MR. BERGEN: That is correct, your Honor.

THE COURT: The white documents underneath that has these same figures in pencil totalling up to

$1,564.10. If you admit the yellow one I don't see how you can not admit the white one.

You have the same sequence to these other documents, I believe.

So I will admit the whole batch.

MR. BERGEN: I also offer in evidence, your Honor --

THE COURT: That is triple T.

MR. BERGEN: -- Defendants' Exhibit PPP, which is the document covering the making of the 7-1/2 ips.

THE COURT: All right.

MR. SCHURTMAN: On this one I do object, your Honor.

THE COURT: Let's have it marked for identification and then we can look at it.

MR. SCHURTMAN: Would you mark the two pages separately, please.

(Defendants' Exhibit TTT was received in evidence.)

(Defendants' Exhibit PPP-1 and PPP-2 were marked for identification.)

THE COURT: Let me see them.

Do you object to both of these?

MR. SCHURTMAN: No, only to the white sheet.

THE COURT: All right. What is your objection?

MR. SCHURTMAN: May I have it and I will explain the reasons.

The yellow sheet says nothing about delivery of any tape. The white sheet seems to speak of a delivery. The white sheet does not have a date on it. There is no indication that the white sheet was in fact stapled to the yellow sheet. In fact, the indication is it has been stapled and restapled at least ten times. And I think before the white sheet is admitted, because the date of delivery may become somewhat critical in this case -- it represents a certain cutoff date -- I would like to have the man who wrote the white sheet so I could cross examine him.

THE COURT: I assume that the only reason the yellow sheet is coming in is that it reflects the delivery of the 7-1/2 --

MR. SCHURTMAN: No, it doesn't.

THE COURT: Wait a minute. It reflects the making of the 7-1/2 ips tape that was delivered to Mr. Levy.

MR. SCHURTMAN: It doesn't reflect that at all, sir.

THE COURT: If it doesn't reflect that

I don't know what use it is to this case.

MR. BERGEN: Your Honor, may I point out something?

THE COURT: I am not interested in just having a bunch of invoices.

MR. BERGEN: Your Honor, the white paper, 2, the second page, refers to one 15 ips, one cassette, one 7-1/2 ips, plus delivery. I would just like to point out that the amount, the total of the white sheet, $156.60, is the exact amount of the yellow sheet, $156.60.

THE COURT:Look, gentlemen, why are we admitting these documents, why are they being admitted?

MR. BERGEN: The only reason I suggested admitting them, your Honor, was because we were trying to figure out and pin down for the purposes of the record when we believe that the tape was given to Mr. Levy.

THE COURT: And when it was made by the studio.

MR. BERGEN: And when it was made by the Record Plant.

THE COURT: Does it not reflect that?

MR. SCHURTMAN: No, it doesn't, your Honor. The yellow sheet does not reflect it and the white sheet, which refers to a delivery of something, it doesn't even

indicate what, is not dated.

THE COURT: Let me think about it overnight. I would assume that we can make some reasonable agreement.

I assume you gentlemen both have gone over the records or documents of Record Plant exhaustively. I assume you are familiar with what it is that reflects the making of that 7-1/2 inch tape. They didn't do it free.

I assume you both overnight can agree on the exact date and what documents reflect it and we don't have to call some clerk from the Record Plant to do that work for us. So I will expect that to be agreed to by 10 o'clock tomorrow , because I know that you are all familiar with all the records in this case.

We will recess until 10 o'clock tomorrow.

(Adjourned to Wednesday, January 21, 1976, at 10:00 a.m.)

BIG SEVEN MUSIC CORPORATION,
et al.

vs. 75 Civ. 1116

JOHN LENNON, et al.

January 21, 1976
10:15 a.m.

(Trial resumed. In open Court.)

THE COURT: Good morning. Can we work on that chronology problem without getting bogged down?

MR. SCHURTMAN: Yes.

MR. BERGEN: Now we have it, your Honor.

MR. SCHURTMAN: May I explain what has happened, your Honor?

THE COURT: Okay.

MR. SCHURTMAN: In the first place, we never had the work sheets during our discovery. They were never furnished to us. The only things that were furnished to us were the invoices without any work sheets stapled to them. So last night I saw the work sheets for the first time.

I have analyzed them and the problem that we have--and Mr. Bergen says that he cannot stipulate on that point--is this: The invoice that Mr. Bergen offered yesterday is an invoice dated November 19, 1974.

It covers a session date of November 14, 1974

and it describes the 16 track mix and then three reels of tape and one cassette.

Attached to it is a work sheet which does not have a date, which refers to the following work: Leader masters, one 15 IPS, one cassette, one 7-1/2 IPS, and then the word "Deliver".

THE COURT: This is all very interesting, but I don't know what it has to do with anything I have to worry about. If we are going to get the trial over by the end of the day tomorrow, which I cincerely hope we are, we are going to have to not get bogged down.

It doesn't make any difference to anything that I know about whether the exact day and hour of the production of those tapes is established.

Mr. Levy testified, your client testified that he received the 7-1/2 tape in mid-November 1974.

MR. SCHURTMAN: And I will so stipulate.

THE COURT: If you want to stipulate, that is what basically Mr. Bergen was trying to pin down with this particular document. It doesn't make the slightest bit of difference whether it was November 15, November 16, November 16 and a half.

MR. SCHURTMAN: Your Honor, that is not the point. The point is what was delivered to Mr. Levy. What

Mr. Bergen has given you is a work sheet that shows they were still working on the 16 track mix.

The point I am making to you is that the very next work sheet in the sequence, which has a number earlier than the one he offered --

THE COURT: I will reserve. I won't receive those documents right now.

I think what we need to do is to get one with Mr. Lennon's testimony. We were trying to cover just the basics about what work he had done before the 7-1/2 tape was produced to Mr. Levy and what work he did afterwards.

MR. SCHURTMAN: Fine.

THE COURT: Isn't that it?

MR. SCHURTMAN: I thought we had covered that yesterday, your Honor.

THE COURT: We had, except you rose and legitimately asked that the dates all be pinned down. That would all be fine, provided that Mr. Lennon remembers all these dates.

But Mr. Lennon probably doesn't remember all these dates. You know, most of us don't. So we have to have Mr. Lennon testify the way he remembers things, not the way some other witness might remember things.

MR. SCHURTMAN: I agree. I think we can cut

through this on the basis of the records and that is to stipulate that after the 7-1/2 inch tape was delivered to Mr. Levy no further work was done at the Record Plant or in the master cutting room or anyplace else until February of 1975.

THE COURT: I don't know whether that is the fact or not.

MR. SCHURTMAN: The records I think establish it.

THE COURT: Okay.

Let me hear from the defense counsel.

MR. BERGEN: That isn't the fact, your Honor.

THE COURT: All right.

MR. SCHURTMAN: Your Honor, I have another application. We have a witness, an expert witness, who is on his way to Europe. He came into town last night. Can I put him on out of turn? It won't be very long.

THE COURT: Is that all right?

MR. BERGEN: Yes, but, your Honor, I also have a witness, a brief witness, who is in from out of town and has to leave this afternoon.

THE COURT: I will accommodate you any way I can.

MR. PRETTYMAN: Your Honor, can we go off the

record for just a moment? I have a problem with witnesses from Europe and so forth. I don't think we need to take up the record time with it.

THE COURT: All right.

(Discussion off the record.)

THE COURT: Let me just clarify something I put on the record. I was not completely serious about concluding the trial tomorrow night. We just had a discussion of our scheduling and I told counsel that I have a criminal motion that will take all day this Friday.

But we will sit today, we will sit tomorrow, and we will sit, as far as I now know, we will sit next week as long as we need to. I know all the lawyers are helping to the maximum to expedite the case.

So let's go with whatever witnesses we have this morning.

MR. SCHURTMAN: I call Mr. Kives.

R A Y M O N D K I V E S, called as a witness by the Plaintiffs, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. SCHURTMAN:

Q Mr. Kives, what is your home address?

A 221 Park Boulevard, Winnepeg, Manitoba, Canada.

Q By whom are you employed?

A K-Tel International, Inc.

Q In what capacity?

A Executive Vice President.

Q How long have you been employed by K-Tel?

A Since -- well, it was incorporated -- since its incorporation, which is July 1, 1971.

Q Where is K-Tel located?

A The corporate offices are 11311 K-Tel Drive, Minnetonka, Minnesota, and its Executive Offices are 1670 Ingster, Boulevard, Winnepeg, Manitoba, Canada.

Q What does K-Tel do?

A We are mass merchandisers of records, tapes and kitchen gadgets through the means of television advertising.

Q Do you merchandise popular music albums by means of television advertising?

A Yes.

Q Do you advertise these music albums for mail order purposes or for some other fashion?

A Both for mail order and other fashions.

Q What are the other fashions?

A Well, through pick-up depot centers like through such stores as Woolworth or Thrifty Drugs.

Q Have you ever heard the expression retail fulfillment center?

A Yes.

Q Do you use retail fulfillment centers?

A Yes, basically we term retail fulfillment centers as mass merchandising, such as Woolworth, Thrifty Drugs, Walgreen's, Grant's.

Q What is K-Tel's annual volume of sales?

A Our last fiscal year, which ended June 30, 1975, was $87 million.

Q And how much of that was record albums?

MR. GRUMBACH: I understand this gentleman is being called as a expert witness in the case?

MR. SCHURTMAN: Both as a fact witness and as an expert.

MR.GRUMBACH: I would like to point out to the Court that in our interrogatories we requested the plaintiff to identify any expert witness whom they expected to call with relation to either our interrogatories or the matters in the complaint, and this gentleman was not identified and we have had no prior information that he was expected to testify, despite the provisions of Rule 26(e)(1), which provides that in subsection B the identify of each person expected to be called as an expert witness at the trial is something that is supposed to be supplemented if the party receives subsequent information.

THE COURT: What about that?

MR. SCHURTMAN: Your Honor, we had not originally expected to call any expert witnesses at this point and what happened when we called Jerry Masucci -- and I think it was Jerry Masucci, one of the witnesses who was called as a fact witness was, in fact, converted into an expert by the defendants.

On cross examination they started asking him questions about whether oral deals are made or not, and at that point we felt that we had to bring in some additional people.

THE COURT: You are saying this is basically rebuttal evidence?

MR. SCHURTMAN: In essence.

THE COURT: I think I will allow it.

MR. GRUMBACH: Note my objection.

MR. PRETTYMAN: May I join the objection?

THE COURT: I don't want to violate the pretrial procedures. What is he going to testify to as an expert, Mr. Schurtman?

MR. SCHURTMAN: He will testify about television merchandising generally; he will testify on whether he uses 7-1/2 inch tapes. He will testify about the custom and practice with respect to oral agreements. That is basically it.

Q When you answered the interrogatories and you were preparing for trial was not this in the background? You knew that these were issues that you had to present evidence on, did you not?

MR. SCHURTMAN: But, quite frankly, I did not intend to call any experts.

THE COURT: When did you arrange for Mr. Kives to come down here?

MR. SCHURTMAN: Early this week. Perhaps I should have given notice a day ago. I frankly did not think of it.

THE COURT: You had no idea of calling an

expert on these subjects until the end of last week's testimony?

MR. SCHURTMAN: That is correct, sir.

MR. PRETTYMAN: May I say for the record that this is not rebuttal testimony. This is part of their main case.

MR. GRUMBACH: In the answer to interrogatory No. 60 they specifically identified two different individuals who are going to testify, for example, on the issue of 7-1/2 inch tape, and this is not the gentleman.

MR. SCHURTMAN: But the experts that we have intended to call on the 7-1/2 inch tape were engineers who would testify about the differences in quality between 7-1/2 inch and 15-inch tapes. This witness is not that engineer. He will testify as to whether it is customary for his company to use 7-1/2-inch tapes.

And, frankly, I had not originally planned to call an expert on that issue. It is only when I saw how it was being blown up in the trial.

THE COURT: What do you mean how it was being blown up? It was referred to in the opening statements.

MR. PRETTYMAN: Further, your Honor, it was an issue throughout the entiredeposition stage. What he is to testify to is one of the direct issues between

the parties.

MR. SCHURTMAN: I thought the issues were as to the decibel and sound quality, and we have prepared to call experts who would testify in detail on the technical aspects of these tapes and we listed them. This gentleman is not going to testify on that issue.

MR. GRUMBACH: If I might, I will read into the record interrogatory No. 60 to show how sweeping our request was as to advice on any expert testimony.

THE COURT: What Mr. Schurtman is saying is that he has no intention of calling this witness until he heard the defense's proof in some way; is that right?

MR. SCHURTMAN: Yes.

MR. GRUMBACH: Mr. Levy on his direct examination was questioned and gave extensive answers and produced exhibits that had been prepared well in advance of trial of 7-1/2 inch recordings that his companies had. That was an issue that was known well in advance of trial.

THE COURT: You refer to Mr. Masucci raising this point? Right?

MR. SCHURTMAN: Was it Mr. Masucci?

THE COURT: You called Mr. Masucci.

MR. SCHURTMAN: As a fact witness as to what happened at the farm.

Your Honor, for example, the musicians who were called yesterday started to give expert testimony on whether 7-1/2 inch tapes were used or not. They had never been listed as experts in advance.

MR. BERGEN: They were testifying as to what their experience was as musicians who had not only appeared on the albums, but also who had prepared records.

MR. SCHURTMAN: I want this witness to testify to his experience. That is all. Perhaps the word "expert is not the correct word.

THE COURT: I do not agree with Mr. Schurtman as to the way this came up. I have in my notes references to Mr. Levy's testimony on direct examination about the question of whether it is possible to use 7-1/2 inch tapes and so forth.

So that issue was raised. And I recall it in the opening statements and all. I am going to permit the testimony, because I think it is a kind of combination of fact and expertise. Aren't you prepared to meet the issue?

MR. PRETTYMAN: I don't know what he is going to testify to since we did not have notice.

THE COURT: What would you have done if you had notice?

MR. PRETTYMAN: We would have taken his deposition, and if we had notice, at least, I would have had an opportunity to talkto the gentleman.

THE COURT: Do you want an opportunity to talk to him?

MR. PRETTYMAN: Certainly.

THE COURT: He will step down from the stand and testify later.

MR. PRETTYMAN: I can do that during lunch.

THE COURT: How can they cross examine? That is the whole purpose. They should have probably had notice. And, anyway, they can't cross examine in the blind,and they can talk to him off the record and he will have to stay here after lunch, or he does not testify.

You are excused for the moment.

MR. PRETTYMAN: In order to accommodate the gentleman, if you want to have lunch a little earlier today so we can get him on and off. He says he has a plane at 4.

THE COURT: We will adjourn a little earlier.

am

MICHAEL H. GRAHAM, called as a witness by the defendants, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. BERGEN:

Q Mr. Graham, can you state your address for the record, please.

A It is 505 West Delaware, Urbana, Illinois.

Q Mr. Graham, can you tell us your background, beginning with law school?

A Yes. I am a graduate of Columbia Law School in 1967. From '67 through '68, I clerked for Inzer B. Wyatt of this Court.

Between '68 -- '68 and '69, I studied criminology at Cambridge University in England and received a tiploma in criminology.

It was an exchange program between Columbia University Law School and the Cambridge Institute of Criminology financed by the Ford Foundation.

In 1969 through 1970, I worked in the Poverty Program as a Regional Heber Smith community lawyer fellow at the Western Center on Law and Poverty, which is located in Los Angeles. It was at Southern California and it was then moved to West 8th Street in Los Angeles. I was there for a

year.

From July of 1970 through July of 1974, I was an associate doing primarily litigation with Marshall, Bratter, Greene, Allison & Tucker in New York and from July of '74, to date, I am an associate professor of law at the University of Illinois in Champaign, Urbana, Illinois.

Q Mr. Graham, during the last year, approximately, while you were at Marshall, Bratter, what masters did you work on primarily?

A Beginning in about April 1973 I began to spend a lot of time on masters related to John Lennon and at that particular point the Beatles settlement discussions began to take place and there was a lot of effort put in to begin to unravel a lot of the complex corporate structure and an understanding of the problems to be able to go on with the Beatles' settlement agreement.

I also got directly involved in two main pieces of litigation in which Apple Records, Inc. New York and/or Mr. Lennon, individually, were involved.

Q When you talk about the Beatles' settlement, you are talking about the settlement of the Beatles' affairs and the dissolution of their partnership?

A It is more complicated than that. But that was the basic avenue, a dissolution of the Beatles and the

co-partnership -- it is a UK partnership -- which was dissolved in late December 1974.

Q Can you tell us what the two pieces of litigation were that you were involved in for Mr. Lennon?

A When we -- when Marshall, Bratter became involved representing Lennon, there were other lawyers who took similar positions with George Harrison and Richard Starkey. Mr. Eastman continued to represent Mr. McCartney. There was a division -- a pending litigation on a substitution basis to those law firms, depending on which particular individual was involved and Marshall, Bratter became attorney of record for those cases, whether against Apple or Lennon or both, in which were basically -- which were basically John Lennon questions.

THE COURT: I tell you, Mr. Graham, you listen to Mr. Bergen carefully.

I think his questions are a little more simple than your answers. If he needs to have all of the background he will ask you. I think his question was did you ever work on litigations involving Lennon.

THE WITNESS: The answer is yes.

There was the Big Seven against Apple Records, Inc., New York, and there was a series of litigations involving Northern Songs and Maclen Music, Inc. and John Lennon.

Q Is the Big Seven litigation the one that involved the alleged breach of the copyright by Come Together?

A That's correct.

Q After you left Marshall, Bratter and joined the faculty of the University of Illinois Law School, did you continue to work on John Lennon matters?

A Yes, I did.

Q Can you tell us on what basis?

A Yes. I was retained as a consultant on a retainer basis and I received $500 a month plus expenses, which in my case are primarily air fare when I travel and for my extensive telephone expenses.

Q When you travel are you also paid for that time?

A Yes, I am.

Q On what basis are you paid?

A It depends on the nature of what I am doing, but basically it is $100 a day.

Q During the period of your involvement with Mr. Lennon's affairs and the dissolution of the Beatles' partnership, with respect to the various Apple companies, could one of the Beatles commit the Apple company without the consent of the others?

MR. SCHURTMAN: I object.

THE COURT: Let's hear the question.

(Question read.)

THE COURT: I will permit it. I recognize as much as anybody that this may be a question of law depending on a lot of contracts, but at the same time there may be some help to everybody to have the testimony of somebody who says that he is acquainted with those contracts.

MR. SCHURTMAN: Could we have the contracts first.

MR. BERGEN: I am not talking about the contracts. I am talking about the various Beatles affairs internally, within their own companies, and whether one of them could go out and make an agreement.

THE COURT: It depends on some kind of an agreement, whether it is a corporate charter agreed to by people or what.

I will take this, and I recognize that it is subject to connection, but I will take it for what it's worth.

A No. All business was handled on a consent of all four parties.

Q Do you know Morris Levy?

A I have met him on two occasions.

Q Do you recall when the first time was that you met Mr. Levy?

A Yes, in September of 1973.

Q Where was that?

A In Mr. Levy's office, where I thought was Roulette Records.

THE COURT: What was that date?

THE WITNESS: September 23, 1973.

THE COURT: That is when you first met Mr. Levy?

THE WITNESS: That's correct.

Q What was the purpose of this meeting with Mr. Levy?

A To discuss with him the possibility of settling the Big Seven litigation, which was scheduled for trial, I believe, in October.

Q And who was present during this meeting?

A David Dolgenos of Marshall, Bratter and myself and Mr. Levy, and in and out, to bring in things, was Mr. Levy's secretary, coffee and some papers.

Q Can you relate to us, Mr. Graham, as best you can, what was said during this meeting, and if you possibly can, tell us who said what, identifying the different people.

A Yes. Well, Mr. Levy had, I understood --knew Dolgenos previously.

So after they said hello, we got to discuss the settlement, a proposal for a settlement, and I -- I was handling the litigation and I said to Mr. Levy that Mr. Lennon

is recording or in the process of recording, an album containing his favorite oldie songs and that I would like him to consider whether there is a possibility of reaching a settlement of having Mr. Lennon record various songs belonging to -- well, belonging to Mr. Levy -- I didn't talk about Big Seven -- belonging to Mr. Levy on this album, and I explained to him that if Mr. Lennon found these songs suitable and they met with his artistic approval, and that he wouldn't do it unless they did, that he would record these songs and that this was --

MR. SCHURTMAN: Your Honor, may I object at this point.

You have pointed out previously that the settlement agreement is in evidence. It is a written agreement. It was approved by this court. Why do we need parole evidence?

MR. BERGEN: This isn't properly evidence on that settlement agreement, your Honor.

THE COURT: I think this witness has a rather precise memory of some background, and I don't mean to be inconsistent, but it sounds to me like this testimony here might be of some help.

I will allow it.

A I explained to Mr. Levy that -- which I am sure

he already knew -- that if Mr. Lennon recorded the songs belonging to Mr. Levy that the mechanical royalties for those songs would go to him, and that John was going to record somebody else's songs anyway, so that we could settle this case, if the songs met John's artistic approval, without costing Apple, who I represented, or Mr. Lennon, anything, and that it was an easy way to settle this case.

Mr. Levy said that -- he asked me "How many albums does John sell," and I said, "About a million worldwide," and he said, "I want ten" -- I think he said "ten or 12 cuts, which would give me the $200,000 that I want to settle this case."

THE COURT: Let me hear the last.

THE WITNESS: He wanted ten or 12 cuts, songs, selections. Each selection per album would -- there would be a mechanical royalty of basically two cents per selection.

THE COURT: In other words, he wanted ten or 12 songs in this album?

THE WITNESS: In this album, which would give him, on the basis of a million units sold, approximately $200,000 in mechanical rights.

Q You mean ten or 12 songs owned by Mr. Levy or one of his companies?

A Right.

What we said is that that -- "It's very, very unlikely that Mr. Lennon would find ten or 12 songs belonging to you which he would -- that he would find -- that he would be interested in recording, that he would otherwise record," and we asked him to give us, you know, after saying that the number was wrong, it was too high, that ten or 12 was not acceptable, to give us lists and albums of songs belonging to him which he -- which we could get -- make available to John so that he could look over them and see if there were in fact any that met with his artistic approval, and Mr. Levy said at that point that he is -- that he would assist in the selection of material for John and that he had helped or done the Beatle repackaging selection.

I said that, "I think John must select his own songs, but please give me the list," and his secretary came in and gave us a series of albums which contained repackages belonging to Mr. Levy's companies and some song books which had songs that also belonged to his companies, and he gave those to us to send to John, who was in California, for him to look over to see if there were in fact any which met with his approval.

And that's -- I think that's all that happened. I took those and I sent them to California.

Q How did the meeting end?

A The meeting ended with Mr. Levy giving us the albums, plus the books, and with the understanding of the concept, but that the numbers weren't any good, that there were just -- he wanted too many songs and that there was no way that it would work, even though it didn't cost John anything, with ten or 12 songs, that it had to be much less than that, because he wasn't going to find ten or 12 in this catalogue, and I sent those to California for Mr. Lennon to look at, to see whether there were in fact any that he would be willing to record.

Mr. Levy did say that You Can't Catch Me would have to be one of them.

Q Did he give a reason for You Can't Catch Me having to be one of the songs?

A Yes.

He said that he would have to take care of Chuck Berry and that he needed that song in order to be able to do it.

Q During the course of this meeting, did Mr. Levy say anything about wanting to have Mr. Lennon record his songs so that it would enhance the copyright of those songs?

A No. We were discussing mechanical royalties.

Q During the course of the meeting, did Mr. Levy

say anything about wanting to have Mr. Lennon record these songs because it would increase the sales of the sheet music of those songs?

A No.

Q Can you relate to us what the next thing was that happened with respect to the Come Together lawsuit?

A Yes.

In October, on the Thursday before October 12, I went to California to see --

THE COURT: What was October 12?

THE WITNESS: It's a Monday.

THE COURT: The day the trial was scheduled?

THE WITNESS: No. I think October 12 was the Friday, your Honor. The trial was scheduled to go on on Monday and the settlement was on that Friday and I was in California the previous Thursday.

the 12th was the Friday, your Honor.

COURT: But the trial was scheduled for the 15th.

THE WITNESS: I believe so. It was the Monday after.

THE COURT: And you went out the Thursday before that?

THE WITNESS: I went out, yes, early in the morn-

ing, right, and I was with Mr. Lennon at about -- I think it was like 11 o'clock California time.

THE COURT: The previous Thursday, right?

THE WITNESS: That's correct.

THE COURT: All right.

Go ahead, Mr. Bergen.

Q Can you tell us what happened when you were in California?

A Yes.

I was discussing with Mr. Lennon his testimony for the trial coming up the next week and late in the afternoon there was a phone call at the house from Mr. Seider, who said that -- John was on one phone and I was on the other, so I heard this -- that he had had Mike Lipton or Mike Stewart call Morris Levy and that they had worked out a settlement, a potential settlement, and he wanted to ask John about it, and what Harold said was that Morris would take three songs, one of them had to be You Can't Catch Me, and that he would -- in addition, John would have to either record one song prior to December -- one additional song prior to December 31, 1974 and one song prior to December 31, 1975, or Apple Records, Inc. -- it is really California -- Apple Co. Limited -- could license two non-Beatle songs to Mr. Levy at the customary rates and advances sometime prior to

December 31, 1974.

Q And was that the settlement that was finally reached?

A Basically, yes. There were some songs specifically excluded from that potential license. We wanted it to be perfectly clear to Mr. Levy that Apple non-Beatle songs would not include any Lennon material or McCartney material.

And there was an additional question that we wanted -- the reason that there were two stages here was we wanted it clear that Mr. Lennon was not obligating himself to license these two songs, but only that he would use his best efforts, because we hadn't talked to the other people at Apple at that time.

THE COURT: You were talking about at that time Mr. Lennon recording You Can't Catch Me, plus two others?

THE WITNESS: That's correct.

THE COURT: And in addition to that there was an alternative.

THE WITNESS: That's correct, your Honor.

THE COURT: Either Apple would license to Levy some songs --

THE WITNESS: Two songs, yes.

THE COURT: Two songs.

THE WITNESS: Non-Lennon, non-McCartney.

THE COURT: Or Mr. Lennon would record two songs at various times of Mr. Levy's?

THE WITNESS: That's correct, two additional songs.

THE COURT: Okay. Go ahead, Mr. Bergen.

MR. GRUMBACH: Your Honor, maybe I can just clarify.

When the witness says songs in respect of licensing from the Apple California catalogue, he is referring to --

THE WITNESS: Masters.

MR. GRUMBACH: --masters, performances of those songs.

THE COURT: Okay. I think I have it.

Q Mr. Graham, I show you Plaintiffs' Exhibits 11 and 12. Are those the two documents that incorporated the terms of the settlement of the Come Together lawsuit?

A Yes, this is the transcript of the settlement.

Q Referring to 11?

A Yes. It is Exhibit 11. And this is -- Exhibit 12 is a letter signed by Mr. Lennon.

Q Subsequent to the settlement of the Come Together lawsuit, did you discuss with Mr. Seider any problems with

the Spector tapes.

THE COURT: What is the question, Mr. Reporter?

(Question read.)

A Yes.

Q Do you recall when that conversation took place?

A I was told by Mr. Seider that Phil Spector had taken the tapes and that he had disappeared. At various stages I believe he had surfaced, but the tapes never came back.

This was -- it was after the settlement, but I don't know, you know, when, that Phil Spector took the tapes.

Q Do you know whether the tapes, the Spector tapes, were ever returned by Mr. Spector?

A I was told that they were, that they had been returned, yes.

Q After they were returned by Mr. Spector, did you discuss again with Mr. Seider the Come Together settlement and its terms?

A At the point in which John was -- either was recording or working on in some form the Walls and Bridges album and I believe at that point that the Spector tapes were back and we did discuss the question of the release of the Walls and Bridges album.

Q Can you tell us what that discussion was?

A Yes, that John had made commitments to the musicians and that he had -- he wanted to get this album finished and get it out for Christmas and that he was going to get back --

THE COURT: You mean the Walls and Bridges album?

THE WITNESS: That's correct.

A And that he would -- that he had work to do on the Spector tapes and that he would do that as soon as he finished the Walls and Bridges album and that he would put the Spector tape out as soon as he could, and we discussed whether or not that was anticipated by the settlement agreement.

Q Can you tell us what else was discussed?

A Yes.

Well, what we said is that -- at the time in which the settlement was done it was clearly my understanding that Lennon would have completed the rock and roll album and put it out, but since Mr. Spector ran away with the tapes, that he couldn't do anything about it, and that --

MR. SCHURTMAN: Your Honor, I object. Is the witness now telling what he discussed with Lennon?

THE COURT: No. He is saying that he discussed with Mr. Seider. Right?

THE WITNESS: That's correct.

MR. SCHURTMAN: Even that would be hearsay. Or is he giving his own impressions now, which would be even worse? I don't know what he is saying at this point.

MR. BERGEN: He is relating the conversation, your Honor.

THE COURT: I guess it is a little vague.

You are now saying what was discussed between you and Mr. --

THE WITNESS: Seider.

THE COURT: Mr. Seider?

THE WITNESS: That's correct.

MR. SCHURTMAN: I object to that on the grounds of hearsay.

THE COURT: Okay. I will sustain the objection.

Wait a minute. How can I admit that if there is an objection? We have a lot of hearsay in that nobody has objected to.

MR. PRETTYMAN: Mr. Seider is a defendant in the case, your Honor, and this gentleman, as far as he is concerned, is testifying merely to what he is saying, a conversation between him and a defendant.

MR. BERGEN: He is testifying about what he said to Mr. Seider in this conversation.

THE COURT: That doesn't help me. You are the

defense lawyer. You want to put on a lot of hearsay testimony about what Mr. Seider said, who is your client.

How can you do that?

MR. BERGEN: Mr. Seider will testify to the other side of the conversation later on.

THE COURT: How can he do that?

MR. BERGEN: He was there.

MR. PRETTYMAN: This isn't even hearsay, your Honor.

MR. BERGEN: I don't think it is hearsay.

MR. SCHURTMAN: That doesn't make it admissible. We could get something in that Mr. Seider said because it's an admission against interest.

THE COURT: Really, if somebody stands up and insists on the observance of the rules of evidence, I have to observe them, don't I? What is the purpose of putting this conversation on.

MR. BERGEN: The purpose is just to show what was happening when Mr. Lennon was recording the Walls and Bridges album and what were the discussions about the Come Together settlement.

MR. PRETTYMAN: May I just say for the record that as far as I am concerned, what this gentleman says he said is not hearsay and he can testify under the hearsay rule

as to what a defendant said.

MR. BERGEN: Your Honor, it's not being offered necessarily for the truth of the statements, but just to show what was being said, the state of mind of the people who were talking at the time.

MR. SCHURTMAN: Your Honor, I still think my objection is soundly based. But if we can have a general ground rule that this sort of conversation can go in on both sides, then I will withdraw the objection.

THE COURT: I think it has.

MR. BERGEN: I think it has.

MR. SCHURTMAN: Except I have found -- well, I won't even say it. I have found that sometimes these technical objections seem to work in only one direction and I would like to protect myself on that.

THE COURT: I certainly don't want them to work in only one direction.

MR. SCHURTMAN: I don't mean in this trial, your Honor.

THE COURT: I think that we have had a lot of testimony about conversations that were out of the presence of the other side, so to speak, and I think that I will receive this, it really being introduced to show the activities of the people. It's a kind of background thing.

MR. SCHURTMAN: Your Honor, I am anticipating that certain witnesses will testify as to what Mr. Levy told them on certain occasions in the course of these proceedings.

I had originally anticipated heresay objections and I had not planned to offer that kind of testimony. But as long as we have the same ground rule, I will withdraw the objection.

THE COURT: Now look --

MR. BERGER: I think that may be a little different, your Honor.

THE COURT: If the defense wants to put on evidence of what Mr. Levy said they are entitled to do that.

MR. SCHURTMAN: Clearly. I am talking about my putting on --

THE COURT: We won't try to cover all possible contingencies. I will permit this to simply show the actions that were being taken by concerned persons at this time. It is purely background.

MR. SCHURTMAN: I would like to offer similar background at the appropriate time.

THE COURT: I am sure you can do that.

MR. SCHURTMAN: Thank you.

THE COURT: All right, Mr. Bergen, go ahead.

Q Will you continue to relate the conversation, please?

A I don't remember where I was.

Q Well, I believe you were at the point where you were talking about how Mr. Lennon was going to go back and work on the tapes, the respective tapes.

THE COURT: You were saying that you and Mr. Seider discussed whether it was in accord with the settlement of the litigation for Mr. Lennon to go ahead and complete Walls and Bridges before he did the Rock and Roll album based on the Spector tapes.

Now, on that subject wh said what?

THE WITNESS: I said to Mr. Seider that when we did the settlement we thought obviously that the album would be completed and go out real quick, and that since Mr. Spector has made it impossible for us to get the album out fast, because he did not return the tapes, and that there was what I had been told a lot of work to be done on them, anyway, when they came back, so long as John put the album out as soon as he could get to it, that he would have complied with the settlement agreement and that that was the intention.

He said that he agreed with that.

Q Now, subsequent to that conversation did you

have another conversation with Mr. Seider about the Spector tapes and the album?

A I had a conversation. We talked a lot on the telephone. I knew some time in early November or late October -- I don't remember -- but I knew there was some discussion going on with respect to putting out the Rock and Roll album on a TV mail order package, because he told me.

Q Mr. Seider told you that?

A Yes, he did.

THE COURT: May I hear that last answer.

(Record read.)

THE COURT: This was in 1974?

THE WITNESS: Yes, sir.

Q D[illegible]. Seider tell you anything else about the discussions about the TV mail order package?

A Yes, he told me that he and John had met with Morris to discuss putting this album out on TV.

Q When you refer to Morris, you refer to Morris Levy?

A Mr. Levy, yes.

Q Did Mr. Seider say anything about EMI?

A He told me that in order, he said that if John wants to go ahead and o this, that we would have to work something out with EMI, and I said that I did not like

the idea. That was basically all we had in that conversation.

Q You said you met with Mr. Levy in September of 1973?

A Yes.

Q Did you meet with him at a later date?

A In November of 1974.

Q Do you recall when in November?

A I came to New York around the 16th and I went back on the 21st and it was not at the beginning and it was not at the end; I would say it was about the 18th or 19th. I don't remember exactly which day.

Q Where was this meeting?

A It was at a club a couple blocks from the Marshall, Bratter office, which I thought was the Club Cavallero.

Q Who was present at this meeting?

A Mr. Seider, myself, Mr. Levy, and at various times at the end of the meeting, Mr. Phil Cahl was there.

Q Now, what was the purpose of this meeting?

A Well, the meeting was in the evening. Mr. Seider told me that we were going to go over to meet Morris at the club and that he wanted to discuss the bidding on the Apple non-Beatle inventory, which I was

involved in trying to sell on behalf of Apple, and to talk about the TV package.

Q Can you describe what you mean by the Apple non-Beatle inventory?

A Yes. The Apple Records in California had a contract with Capitol which expired in September, I think, September 1, 1973. Under that contract all of the albums which had been made pursuant to that agreement were the property of Apple, and these included albums of all of the artists that were put out pursuant to the contract, including Billy Preston, Bad Finger, Mary Hopkins and Yoko Ono was on those also. These albums, the Apple contingency, all four groups of lawyers and advisors had agreed to pursue in the sale of these albums in the cut-out market, and I had undertaken on behalf of them to try and solicit offers for these albums, and Mr. Levy apparently had expressed an interest in putting in a bid for these albums, and there were also some Let It Be album that involved, although they were not under the same agreement.

Q Can you tell us where at the Club Cavallaro you and Mr. Levy and Mr. SEider sat?

A Yes. When we came in the club Mr. Seider was in his California outfit and did not have a jacket.

So they gave him a jacket. There was a blazer for him, and Mr. Levy arranged that, and we went into the restaurant, and on the left-hand side when you get through the door is a table,horseshoe table with three places, three places to sit, and there was an empty space for the party facing the aisle.

Q How long did this meeting last?

A I would say an hour, an hour and a half.

Q Did you have dinner?

A The three of us had dinner, and later on Mr. Cahl came over and he ate vegetables.

Q Was this towards the end of the meeting?

A Yes.

Q Now, can you tell us as best you can recall what was discussed, identifying the parties as you go through the meeting?

A As soon as we got the coat on Mr. Seider and went in, Mr. Levy said to him,"Have you called EMI? Did you talk to Len Wood?"

And that was even before we sat down.

And Mr. Seider said he hadnot called EMI yet. We sat down and looked at the menu and ordered dinner.

After we had done that, we started to talk about the proposed TV package, and Harold said to

Mr. Levy, "Will you explain to Mike how the TV mail order works?

THE COURT: Mike being yourself?

THE WITNESS: That is correct. And he, Mr. Levy, undertook to explain that, and what he said was that the way it worked is that we do a commercial, and we go to various areas which we know are good test markets, that we put the ad on television and saturate this particular area, putting it on mostly at night and on Sunday afternoon, and you can buy time, and, apparently, it works better.

He said you can buy time at those time slots, and that it works well for this kind of thing, and that after you have done your test marketing, the commercial says if you want the album, send your money into a post office box, and after you have done this test marketing and are satisfied with the results, you would then undertake to do this kind of mail order, using the same commercials, in various sections of the country, saturating the community with commercials.

You would keep track of the number of sales that you receive in relation to the advertising dollar, the numer of commercials, and discontinue the advertising when it reaches the point that it is no longer profitable to

continue to do that, and then you just go ahead and you take your commercials and you move to another area of the country, and you continue this until you saturdate the entire nation. In each particular area Mr. Levy said that it normally run about four to six weeks of TV commercials before you had saturated. This one here did not know how it would be. It depended on how big a success it was.

Q Did Mr. Levy say when he was talking about these particular areas of the country that youdo one on the East Coast and then one on the West Coast and then you take the Central United States?

A No, he had some areaswhich he named our test areas. But I don't remember what it was. But what he was talking about, what I understood him to be saying is that the areas were much narrower than that, and that you would be saturating regional sections and then moving on, and you would have various sets of commercials. You might be doing two or three of these at the same time, and you would move them until you did saturate the entire country, but in this way you reduce the number of commercials that you need.

Q After Mr. Levy finished explaining that, what happened next?

A Well, at that point Mr. Levy was getting back

to EMI. He said, "We still can get this thing out for Christmas and you got to get ahold of Len Wood."

Harold said to him, in effect "What is it you want me to tell him? What kind of a deal are you proposing?" To which Mr. Levy said that the TV mail order system, you should tell EMI that the TV mail order is great, that it is a great thing for the artist, that they will continue to have the retail sales, that it does not hurt their catalog, and it is just a great concept all around.

Mr. Seider said, "Well, would you do a joint deal with EMI?"

Then Mr. Levy said he would not do a deal with EMI, that he would do a deal with John, he will do a mail order deal with John in the United States, and EMI can do a mail order in the rest of the world, and if they don't know how to do it, he will help them, and that is what Harold should tell Len Wood when he talks to him.

Q Did you or Mr. Seider say anything in response to that?

A I said that they owned the master, they already can do it all over. Then we got into a discussion of the cost of the master. I remember explaining to Mr. Levy that the Phil Spector master cost, what I had been told, over

$200,000 at the time. And this was very unusual that it was that expensive, but because of all the delays, which he acknowledged he was aware of, and the need for Mr. Lennon to go and do a lot of it over again, that it ran so much, that John usually runs much, much less, and that there would have to be some way to get something to EMI to pay them for their master if you are going to make a proposal to them.

THE COURT: Will you read that again?

(Testimony read.)

Q Mr. Graham, was there then some discussion of figures?

A That did not tell Mr. Seider anything to tell Len Wood. We asked Mr. Levy if he could explain the numbers to us.

THE COURT: Who asked?

THE WITNESS: I think Harold asked, "Could you explain the numbers of the deal? How the TV package would work on the numbers so that we could understand for ourselves who gets what?"

And Mr. Levy went ahead and he scribbled, I believe it was, on the back of a piece of paper that he had in his pocket, the numbers that relate to the TV deal, and what he said was this, that the album would sell, that John's album would sell for $4.98, because it was

going to be put out on television and that you should sell it for less than normal retail price, which had been at that point, it was generally $6.98, although the album for Lennon had been $5.98.

But Morris said it should be at the 4.98 price, that you would have to sell it to the stores to give them $1.50, so you would have to sell it for approximately $3.48 so they would carry it.

THE COURT: Sell it to the stores for what?

THE WITNESS: $1.50 less than the retail price. It would be $3.48.

THE COURT: All right.

THE WITNESS: And that you advertise it on television and that you put it into K-Mark and Woolworth, and I think he said food stores, so that it would be in the aisles when the people come in and they would buy it. This is where he said the big money was, the big sales on the album like John's would be, and that you got to give them $1.50 or they would not take the merchandise.

He then said that the advertising cost would be $1.25 per album, that the cost of manufacturing the album would be 40 cents, and to make the jacket and collate would cost 15 cents.

I said to him, "Then you have the mechanicals.

We will figure 24 cents."

Q You mean the mechanical royalties?

A The mechanical royalties of 2 cents, and I gave him the 24 cents figure, because I always use that figure. I did not know how many cuts there would be on an album, but I gave him the number 24 cents, 2 cents times 12 cuts for the mechanicals. And I believe it was Harold who said, "Then you would have the A.F. of M. charge of 1/2 percent, which we then, I believe, subtracted it down, and it left $1.23. We use, I think, six cents instead of 7-1/2.

Q Was there anything in addition to the A.F. of M.?

A Well, Morris said that he wanted a dollar on the deal, that he would not take anything less than a buck, which left 23 cents for both EMI and Lennon, and Harold said to him at that point that John's normal royalty rate, meaning the Capitol rate, is 12 percent,and that he would not do this for less than the 12 percent, which was 60 cents, which did not leave anything for EMI. And that is where we left the numbers. There was not any further discussion on it, except for two things.

I said to Mr. Levy, "The advertising can come down if you sell more units, wouldn't it?"

He said, "Yes."

And either I or Mr. Seider -- and I don't remember who, said --

THE COURT: Who said it?

THE WITNESS: One of us, myself or Mr. Seider said, "Capitol can do the pressing because it would give Capitol an absorption of the overhead factor.

THE COURT: Going back a bit, after it was figured what different people were to get and what the different costs were, it came out with 23 cents per album that was left for EMI and Mr. Lennon?

THE WITNESS: After Mr. Levy took his dollar, yes, sir.

THE COURT: And Mr. Seider's response was what?

THE WITNESS: That John's normal royalty rate is 12 percent.

THE COURT: How would that figure out here?

THE WITNESS: It doesn't.

THE COURT: 12 percent of $4.98?

THE WITNESS: Yes, sir. It would be 60 cents.

THE COURT: Then what else did Mr. Seider say?

THE WITNESS: That he would not do this for less than his normal royalty rate, he is not going to take less than he could get from Capitol.

Q When you say that left only 23 cents for Mr. Lennon and EMI, you were referring to the reimbursement of EMI's cost?

A For the master, plus they would want to make a profit.

Q Now, did Mr. Levy modify those figures in any way to increase Mr. Lennon's royalty?

A You asked me a question before, was there anything else, and there was. There was a 3 percent freight charge to move the albums to the store and to move the albums back again.

Q So when you took that figure and added it all to the others, it came to the $1.23 figure?

A Yes.

Q And Mr. Levy said he would want a dollar?

A Yes.

Q Which left you with 23 cents?

A That is correct.

Q Did Mr. Levy modify these figures in order to increase Mr. Lennon's royalty or the amount of money that would be available for EMI?

A No.

Q Did Mr. Levy say anything more about contacting EMI?

A He must have -- he did say it many times during the meeting, that Harold should call Len Wood, at various stages, constantly.

Q How did the meeting finally end?

A What happened is about three-quarters of the way through the meeting a gentleman arrived who Mr. Levy said -- Mr. Cahl said -- he had been in the restaurant, but he had not been sitting for us -- said was here to get the list of the non-Beatle selections, at which point Mr. Seider and I realized that we forgot to bring it and we asked Mr. Levy to ask him to stay and that we would go back to the office, meaning the Marshall, Bratter office, and give him the non-Beatle list, the information on the non-Beatle inventory.

Mr. Levy told Mr. Cahl to get the guy a drink and let him sit outside, not outside the door, outside the eating room.

When the eating ended Mr. Levy said again to Mr. Seider, "Look,you got to call EMI."

I think he said, "Do it tonight." It would be 3 o'clock in the morning, and he said, "Call them first thing in the morning. Call Len Wood." And we went out. And Mr. Seider gave them back their jacket, we took the individual who was there with Mr. Levy back to the

Marshall, Bratter office, and we gave him the information on the non-Beatle deal.

THE COURT: This person was a representative of Mr. Levy?

THE WITNESS: He was somebody that Mr. Levy said I should give the list to. He looked to me like he was an employee of one of his companies.

Q Was anything said during the course of the meeting about Mr. Lennon's attitude toward this TV album?

A Yes, Mr. Levy said at the beginning of the meeting that John was very interested in the TV concept and that he liked the idea.

THE COURT: Who said that?

THE WITNESS: Mr. Levy said that to Harold and myself that Mr. Lennon was interested in the TV concept of mail order and he liked the idea and Harold said that John was interested in it, that he did like the idea, although he had not decided to do it, and that we would have to work something out with EMI.

Q Do you know what happened to the piece of paper that the figures were written on, that Mr. Levy was writing the figures down on?

A I know we did not take them. We didn't have

it. And when we got back to Marshall, Bratter with this gentleman, rather than go back to the restaurant and get it, because I don't remember what happened to it, I took out a yellow pad in the office and I wrote out all of the numbers that Mr. Levy had given us, and I gave that to Mr. Seider that evening and made a correction on it.

Q Mr. Graham, I show you a document previously marked as Defendant's Exhibit GGGG and ask you if that is the piece of paper you are talking about?

A Yes, it is.

Q Can you tell us who made the correction down in the lower lefthand corner?

A Yes, Mr. Seider did, because he said that -- he was correct. I had written the word "mailing" and the proper word was "freight."

MR. BERGEN: Your Honor, I offer this Defendants' Exhibit in evidence.

MR. SCHURTMAN: I would like to ask some questions on voir dire.

THE COURT: Okay.

xx VOIR DIRE EXAMINATION

BY MR. SCHURTMAN:

Q Who wrote this piece of paper?

A I did.

Q When?

A That evening back in Marshall, Bratter.

Q You sat down with Mr. Seider and reconstructed the figures?

A No, I did not.

Q You did it by yourself?

A I went out, took a yellow pad of paper off Mr. Dolgenos secretary's desk, and I did it myself.

Q When did you discuss it with Mr. Seider?

A When I came back in the room and gave it to him.

Q And that is when you made the correction?

A That's correct.

Q And who has had possession of that piece of paper since then?

A I don't know. I have seen the original again, but I have not had it. Mr. Seider had it at that point.

MR. SCHURTMAN: Your Honor, during Mr. Seider's deposition, we requested this document and it was never furnished to us.

This is the first time I have seen it.

MR. BERGEN: I don't believe it was requested. It was never requested in any of the notices to produce, it was never referred to in any of the interrogatories.

THE COURT: Mr. Schurtman, you show me where it was requested. Let's take a short break now.

(Recess.)

MR. SCHURTMAN: Your Honor, page 189 of Harold Seider's deposition.

Mr. Kanzer asked the following question:

"Q Do you know whether any notes were taken at that

meeting by either you or by Mr. Graham?

"MR. PRETTYMAN: I thought he said Mr. Graham reconstructed the figures on a sheet of paper.

"Q Did he reconstruct them on a sheet of paper or just reconstruct them?

"A I remember Michael reconstructed them on a sheet of paper.

"Q Do you know who has that sheet of paper?

"A I guess Michael does."

The witness has just testified that he gave them to Mr. Seider, who said that the witness had them. So I think we did ask for them. We didn't get them.

But I have reconsidered the matter and I have no objection to the exhibit going in.

THE COURT: All right. Proceed. We are receiving Exhibit GGGG.

(Defendants' Exhibit GGGG received in evidence.)

BY MR. BERGEN:

Q Mr. Graham, do you recall when you next heard or participated in any discussions about Morris Levy after this meeting on November 16 or 19?

A Yes, the next morning.

Q Can you tell us where that discussion took place and who it was with?

A It was in the office of Mr. Dolgenos at Marshall, Bratter and when we --

Q Who was present?

A Mr. Seider and myself and Mr. Dolgenos was there. When we arrived there was a message for Mr. Seider that Mr. Levy had called and while we were there Mr. Levy called again and I believe Mr. Seider spoke with him at that point.

THE COURT: Let me talk about our noon plans.

I would like to go until 12:30 and then take a recess until a quarter of one. I would hope that that would get this gentleman on his 4 o'clock plane.

MR. SCHURTMAN: Your Honor, may I just point out--

THE COURT: You said he would be very brief.

MR. SCHURTMAN: Your Honor, may I just point out --

THE COURT: You said he would be very brief.

MR. SCHURTMAN: Mr. Kives has a 4 o'clock plane. I understand that this gentleman has a 6 o'clock plane. Could I suggest that to make sure Mr. Kives gets through his direct and cross examination that as soon as the direct is finished here that Mr. Kives goes on, after that luncheon meeting.

THE COURT: I will tell you, I just --

MR. SCHURTMAN: I agree with your scheduling.

MR. BERGEN: Your Honor, I am going to be finished with direct right now.

I have a few more questions.

THE COURT: After that, then you make your proposal.

MR. PRETTYMAN: Did you say we would come back at a quarter of one?

THE COURT: Quarter of two, I meant.

BY MR. BERGEN:

Q Mr. Graham, I show you a document that is in evidence, Plaintiffs' Exhibit 30, and ask if you have ever seen that document or a copy of it before.

A Yes, I have.

Q Can you tell us the circumstances of that document and how you first saw it?

A Yes. I saw it after it had been sent, but the document was a result of completion of the settlement, the Beatles' settlement agreement in -- I think it is December 29, 1974, pursuant to which the relevant Apple company was authorized to lisence to Mr. Levy certain selections to comply with the settlement agreement.

THE COURT: May I see Exhibit 30?

THE WITNESS: Yes, sir.

THE COURT: Can I have the answer read to this

point, and then you take it up, Mr. Graham.

THE WITNESS: Yes, sir.

(Answer read.)

Q When you say the relevant Apple company, Mr. Graham, what Apple company are you referring to?

A I don't know. It's either Apple Records, Inc. California or Apple Corps Limited or possibly Apple Corps SA.

I don't remember which one we were advised had the rights to license. But whichever one it was was the one that did it.

Q But it was not Apple Records, Inc., the New York corporation?

A It should not have been, I don't believe, and I don't think it was.

Q Referring to your testimony about these figures and Defendants' Exhibit GGGG, did Mr. Levy tell you that those figures related to foreign sales?

A No.

Q This was domestic sales through stores like K. Mart and --

A Woolworth and food stores, that's correct.

MR. BERGER: Your witness.

MR. SCHURTMAN: Until what time shall we continue,

your Honor?

THE COURT: What is your proposal? I want to go to 12:30. Do you want to cross examine this witness?

MR. SCHURTMAN: I will start my cross examination.

THE COURT: I thought we were going to defer Mr. Kives until after lunch to give time to the defense counsel to interview him.

MR. SCHURTMAN: Right.

THE COURT: So why don't you go ahead with your cross.

MR. SCHURTMAN: Yes. I said I would.

THE COURT: All right.

xx CROSS EXAMINATION

BY MR. SCHURTMAN:

Q Mr. Graham, you have testified that you are familiar with the various Apple companies and their organization.

Could you outline for us briefly which Apple is which in the setup?

A As of what date?

Q As of October 1973, and as of October 1974.

A Okay.

I used to be good at this.

The basic parent corporation is Apple Corps Limited, which is owned 25 percent by each of the four Beatles.

The remaining Apple Corps Limited, was an 80 percent partner in the partnership called Beatles and Company, the other 20 percent consisting of 5 percent each to the four individual Beatles.

In other words, Apple owned 80, John, Paul, George and Ringo each owned 5 each.

Apple Corps Limited owned Apple Corps.

THE COURT: Just a second.

I don't see why you don't put this on a chart or stipulate it. Everybody must understand all this.

MR. SCHURTMAN: Your Honor, there is a court next door that has been spending the last few months trying to figure out the distinction. Every few weeks --

THE COURT: I don't know why nobody has made up a chart for them.

MR. SCHURTMAN: Nobody has been able to figure it out. This witness apparently knows it.

MR. BERGEN: I am going to object to the relevance anyhow.

THE COURT: I am not going to worry too much about that. Let's go.

A Apple Corps Limited owns Apple Corps SA, which is a Swiss corporation.

In the United States there was -- there is, I believe still a company called Apple Corps, Inc., which is a parent corporation for Apple Corps -- Apple Records, Inc., New York and Apple Records, Inc., California.

Now, it gets confusing. I can't recall whether Apple Films Inc. was owned by Apple Corps, Inc. or was owned --

THE COURT: What is the point of all this, Mr. Schurtman?

Q My next question is do you know who the president was of Apple Records, Inc. in New York?

A It's my understanding that the president of all the United States corporations at the time period you asked me was Mr. Lennon.

Q And was there any restriction in the corporation's charter or by-laws which prevented Mr. Lennon from exercising his authority as president without the consent of the other Beatles?

A I don't know.

Q At the time you discussed the September --

THE COURT: You know, that is a funny way to phrase it.

There was a question on your direct, and now we have a question again, which is basically what would the authority be of the president of these Apple corporations in the United States, and I take it you really don't know, you looked at the by-laws for that point and so forth, right?

THE WITNESS: Your Honor, I don't know what the by-laws said and I don't -- I don't hold myself out as a corporate attorney to give opinions. I know how it functioned during that period in terms of how each of the four individuals had their advisors and their lawyers and how decisions were made.

THE COURT: Suppose they wanted to buy stationery. Did they all have to sign the order for the stationery?

THE WITNESS: At various times, with this company, the answer might be yes.

THE COURT: I didn't get much out of the question on direct, I don't get much out now. Unless we are dealing with a specific problem in a specific context, I am not going to try to -- it would be purely speculation for me to try to understand what the authority of Mr. Lennon was to do something on behalf of the corporation.

MR. SCHURTMAN: Your Honor, I objected when the question was asked on direct because I said the documents ought to speak for themselves.

THE COURT: Okay.

I tell you right now I find it of very little weight or no weight. It is meaningless to me.

MR. SCHURTMAN: I agree.

THE COURT: Okay. So you don't have to persue it.

Q At the time of the September 1973 settlement discussions of the copyright infringement action which was pending before Judge Griesa, whom did you represent?

A Apple Records, Inc., New York, and the law firm also represented at the same time Mr. Lennon.

Q You represented both Mr. Lennon and Apple Records, Inc., did you not?

A That's correct, but only Apple Records, Inc. was a defendant.

Q But for purposes of the settlement discussions you represented both?

A That's correct.

THE COURT: That was the New York Corporation, right?

THE WITNESS: That's correct, your Honor.

Q Who paid you at the time?

A Who paid me?

Q Marshall, Bratter.

Q At that time you were still associated with Marshall, Bratter?

A Yes.

Q You have testified that at the time of the original settlement discussion it was contemplated or intended that the Spector rock and roll album would be the one that would incorporate the three Big Seven songs?

A That's correct.

Q I show you the two documents which constitute the settlement agreement, Plaintiffs' Exhibits 11 and 12, and I suggest to you that nowhere in either exhibit is there any reference to the next album being the Spector rock and roll album.

THE COURT: He didn't say it was. The exhibits speak for themselves. What is your question?

Q My question is if that was the intention why was it not reflected in the written documents. That is my question. It would have been easy enough to say --

THE COURT: Let's not argue. The question is why wasn't this specific intention put in the document?

A Reading from page 2 of Plaintiffs' Exhibit 11 -- and I haven't read the rest of it through again -- "The settlement agreement reached to dispose of the action is as follows:

This is my statement to your Honor in part of the settlement.

"John Lennon agrees to record three songs belonging to Big Seven Publishers on his next album."

It isn't referred to by name, no.

Q My question was if the intention was to make it the Spector album why didn't you say so in the agreement?

MR. PRETTYMAN: Your Honor, I object. That isn't what the witness testified to. He testified that he expected the next Spector album to be the next album and that is why he assumed it would be on there.

THE COURT: I think you are entitled to ask him, but I don't know that it's terribly important.

THE WITNESS: May I answer?

THE COURT: Yes.

A There was no name for it. I mean, I didn't call it the Spector album and I didn't call it rock and roll, I didn't call it anything.

All I knew is that John was going to record some old songs that he considered his favorites on an album and I didn't have a name for it.

Q What was the next album that was in fact released by Mr. Lennon.

A I believe it was -- after that was Walls and

Bridges.

Q I just want to clarify one point. I think we are all in agreement on it.

There was an intervening album called Mind Games. Do you recall that?

A I believe that that's not right. The Mind Games album was released at approximately the same date, October 12, 1973, because there was -- I heard the album in California when I was with John.

That was not what this intended. We were talking about the next album, not the one that John was just finishing.

Q In other words, you did not intend Mind Games as the next album?

A It was not the one that was included in this agreement.

MR. GRUMBACH: Mr. Schurtman, are you suggesting that there be a stipulation that nobody either on the plaintiffs' side or the defendants' side considered that Mind Games, although it might in a technical sense be the very next album, was the next album as the term --

MR. SCHURTMAN: Yes. I am suggesting --

THE COURT: Please, please.

If you want to talk about a stipulation talk to

Mr. Schurtman outside the court.

MR. SCHURTMAN: I agree to such a stipulation.

THE COURT: I wish I understood it.

Let's go to something else.

Q You testified that when Mr. Lennon got the Spector tapes back he was working on the Walls and Bridges album at that time and you participated in some discussions as to whether Walls and Bridges would or would not comply with the 1973 settlement agreement.

Do you recall that testimony?

A It wasn't whether Walls and Bridges would, but yes, I recall the testimony.

Q As I recall it, you said something to the effect that in your opinion Mr. Lennon could go ahead and release Walls and Bridges even though that would be his next album.

MR. BERGEN: I don't think that was the witness' testimony at all.

MR. SCHURTMAN: I can't recall his exact testimony.

THE COURT: Look, Mr. Schurtman, let's not ask what he testified about.

The record will show that. If it's absolutely essential we can have the reporter read that back.

Ask him directly about facts, not about what did

you testify to this morning.

Q Do you recall a discussion about the Walls and Bridges album at the time the Spector tapes were retrieved?

A Yes.

Q Who participated in that discussion?

A Mr. Seider and myself.

Q And what was said?

A We were discussing whether if the Walls and Bridges album is released next, John finishes it and gets it out for Christmas, whether there would be compliance with the settlement agreement, and I said to Mr. Seider that because the Phil Spector tapes disappeared, if John went ahead and finished the tapes as soon as he could get to them and put the album out, that I think it would be okay.

Q And what did Mr. Seider say?

A I believe he agreed with that.

Q Did either of you suggest that someone should call Mr. Levy and check with him?

A No.

Q Do you know whether anyone called Mr. Levy and asked him if that would be all right with him?

A I don't know.

Q Do you know whether any communication was sent to Mr. Levy on that point?

A I don't know whether any was or not.

Q Do you know how many Spector tapes were returned?

A I believe I was told it was eight or nine tracks.

Q How many tracks does Mr. Lennon normally put on an album?

A I don't keep track, but to the extent that I know, it's less than the 12 that I am familiar with. I think it's usually less than 12. I think it's ten.

Q Was there any discussion at that point if Mr. Lennon recorded another two or three tracks he could put the Spector album out?

A No, because there -- the Spector takes were, to my understand, not in the condition where you could simply add a couple of tracks and finish them. There were lots of problems with the tapes themselves and what Mr. Spector had been doing in California, not just that the tapes disappeared.

Q Did Mr. Seider tell you at some point that there had been a meeting to discuss the settlement in New York?

A No, that is not what he said.

Q When did you first learn, if ever, that there had been a meeting between Mr. Levy, Mr. Lennon and Mr. Seider in New York in October 1974 to discuss what had happened to the prior settlement agreement?

A I never -- the first time I heard that anybody

had said that that had happened was sometime I believe in January or when the litigation started in 1975.

Q Did Mr. Seider tell you at some point that there had been a discussion between Mr. Levy and Mr. Lennon about a TV package?

A That's correct.

Q When did he tell you that?

A Sometime in late October or early November.

Q Where was that, where did he tell you that?

A On the telephone. I call him a lot.

Q And what did he tell you about that particular discussion?

A He said that he and John had talked to Morris about putting out a package on television and that John was interested in the idea and that if it was going to be worked out, if he wanted to go ahead with it, we would have to work something out with EMI.

Q Did he tell you anything else about this meeting?

A No, I didn't know it was a meeting.

Q Did he say that there had been any discussion of price?

A No, sir.

THE COURT: I think there is something garbled in your last answer. It is confusing to me. Let's have the last answer read and you listen to it.

(Testimony read.)

THE COURT: You heard your answer?

THE WITNESS: Yes, that is correct.

Q Now, do you know what had been worked out with EMI?

A The rights to the master.

Q Did you express any opinion on that?

A I said that I didn't think the whole idea was any good, that I did not think Mr. Lennon should be the first Beatle to go and do a TV package and that artistically I didn't like it, and, of course, it is not my decision, but I said I didn't like it.

Q Did you and Mr. Seider discuss what type of consent would be needed from EMI?

A No.

Q Were you familiar with the contracts between Lennon and Apple and EMI and Capitol?

A Yes, I was.

Q Do you know whether these contracts contained any exception for mail order rights in the United States?

A At the time of these conversations I never read any provisions that could possibly even be interpreted. I knew EMI owned the masters completely. I still do. I had no knowledge other than EMI owned them.

Q Have you subsequently learned that there is an exception for mail order rights?

A No. I have subsequently read a provision that was pointed out to me dealing with club rights, after the litigation started.

MR. PRETTYMAN: Since he is reaching for the contract may I save a little time by saying I am going to object to any references to that?

MR. SCHURTMAN: You permitted this witness to testify about rights and licenses and authorizations without even the contracts being in.

THE COURT: What do you mean I have permitted him to testify about licenses, rights and authorizations? You testified about conversations. The only testimony I thought I permitted as far as just knowledge of legal

rights I told you a moment ago I really gave no weight to those.

MR. SCHURTMAN: He testified about the nature of the Beatle settlement without the contract being in. He has testified repeatedly that it was his understanding EMI had to give consent to everything without the contract being in.

THE COURT: Did you object?

MR. SCHURTMAN: At times I did. Now, at this point I would like to ask the witness about the contracts themselves. He has told you that he worked repeatedly with these contracts. I am beginning to wonder why there is this opposition to the contracts going in.

MR. BERGEN: He has not testified he worked repeatedly with those contracts.

THE COURT: Just take it easy. I don't think that it is going to serve any terribly useful purpose to have a lawyer simply discussing on the stand his interpretation of the contracts. Maybe it will serve a purpose. As an initial proposition, I don't imagine it will. I could be wrong.

In other words, if we have a lawyer who did not specifically get out these contracts and use them at the time, then what he is doing now I assume is just looking at

them and giving you his opinion about them. Well, maybe that is helpful. It is a little unusual.

Now, if you want to cross examine him about whether he ever did read these contracts prior to the events in question and probed his knowledge of the contracts as they existed at the time of the events in question, that is perfectly valid. You get me there? There is a distinction.

But let's start with the latter and hope we just don't get inot an abstract legl argument with the witness on the meaning of the contract. That is basically my problem.

MR. BERGEN: The witness already testified that he did not read the contracts before the events in question.

THE COURT: Have you ever examined a witness and wanted to contradict his direct? He has a perfect right to show him the contracts and probe him.

BY MR. SCHURTMAN:

Q Mr. Graham, I show you Plaintiffs' Exhibits 1, 8-A and 8-B for identification. I ask you if you have ever seen the originals?

THE COURT: What are those numbers?

MR. SCHURTMAN: 1, 8-A and 8-B for identification.

Q I ask you if you have ever seen the originals or copies of these documents before?

MR. PRETTYMAN: May I ask what they are?

THE COURT: You got a list. Why don't you come down here?

MR. PRETTYMAN: I wondered whichever contract you are showing him?

MR. SCHURTMAN: Your Honor, there is some confusion. 8-A and 8-B are copies of the same contract. One is hard to read and the other is a clarification.

I would also like the witness to look at 9-A. There are three basic contracts.

Plaintiffs' Exhibit 1 is an agreement made January 26, 1967, between EMI, Bryan Epstein and the four individual Beatles who are listed by name.

Exhibit 8-A is an agreement made September 1st.

THE COURT: Exhibit what?

MR. SCHURTMAN: Exhibits 8-A and 8-B is an agreement made between EMI and Apple Records, Inc. and New York Corporation.

THE COURT: What is the date of that?

MR. SCHURTMAN: September 1, 1969.

Exhibit 9-A is an agreement made September 1, 1969, between Capitol Records, Inc., Capitol Records Distributing Corp. and Apple Records, Inc.

THE COURT: This is again the New York company?

MR. SCHURTMAN: The New York company, yes.

THE COURT: Let's go ahead. What is your question of this witness?

Q Directing your attention to these three exhibits, have you ever seen copies or originals of them before?

A I don't think I seen an original of anything, but I have seen lots of copies.

THE COURT: Of these documents?

THE WITNESS: I read Exhibit 9-A,which is the Apple-Capitol New York Beatle agreement.

THE COURT: When did you read 9-A?

THE WITNESS: I probably read the whole thing when it was turned over, when I got a copy of it in about, I would say, May or June.

THE COURT: Of '73?

THE WITNESS: Yes. The same thing with the '67 recording agreement. I know I have read it.

THE COURT: That is Exhibit 1?

THE WITNESS: Yes. I believe I have seen the license agreement, Exhibit 8-A, in the package of documents that were delivered to me in about that same period of time. They were sent over from George Harrison's attorney's office, but I don't believe that I ever read the license agreement until some time in 1975 in connection with another problem.

MR. PRETTYMAN: Which is the license agreement?

THE WITNESS: 8-A is the license agreement between EMI and Apple. I know I never read it before then.

Q Do you know of any other agreements between the Beatles, EMI and Capitol that relate to the United States rights?

A There were a series of letters and Bank of England approval letters dealing with the flow of money, and I know those exist, and there may be others, but I don't know.

In the course of things since I left I believe other documents have surfaced.

Q Now, in October of 1974 or November of 1974, when you gave Mr. Seider your opinion about whether it would be desirable for John Lennon to make such a package with

Mr. Levy, did you know whether there was anything in these agreements relating to mail order rights in the United States? Or is this something you learned later?

A I had no idea at the time there was anything in these agreement that related to club rights.

Q You keep switching my question, which relates to mail order rights, to the word club rights. What is the distinction?

A I don't know the distinction. I have read these agreements --

THE COURT: Mr. Graham, you listen to Mr. Schurtman's question. He is simply asking you at the time when you had your discussion with Mr. Seider, which I guess was --

THE WITNESS: October or November, 1974 --

THE COURT: It would be late October, early November, didn't you say?

October or November? Did you know whether there was anything in any of the applicable agreements relating to mail order rights?

THE WITNESS: No, sir.

Q Now, is there any distinction as far as you know between club rights and mail order rights?

THE COURT: Are we now starting on a

theoretical discussion?

MR. SCHURTMAN: No.

A Is there any difference?

Q Yes.

A I don't have sufficient knowledge of the industry to be able to tell you. I know what it is I have been told it means, but I don't know myself, and I still don't know what it means.

Q We will move on.

Now, you testified that in December of 1974 a letter was written relating to the balance of the '73 settlement, that was the Dolgenos letter which you have before you, Plaintiffs' Exhibit 30?

A Right.

Q And I think you testified that had something to do with a settlement that had been worked out by the Beatles?

A That is correct.

Q Did you participate in the working out of the Beatles' settlement?

A Yes, I did.

Q Do you have a copy of that settlement agreement with you?

A No, I don't.

Q I show you a document that has been marked Plaintiffs' Exhibit 84 for identification, which purports to be a settlement agreement between the four Beatles individually named and Apple Corporation Limited, dated December 29, 1974. I ask you whether this is the Beatle settlement agreement to which you referred in your testimony on direct?

MR. PRETTYMAN: Since wehave not been shown this, let me see it.

THE COURT:Sure, you can see it.

MR. SCHURTMAN: Here, I have an extra copy.

THE COURT: What is the answer?

A The answer to the question is that the settlement agreement that I am referring to included this, which I believe is the cover. It was about this thick (indicating) and what it had in it was resolutions of various corporations or authorization for appointment of directors, and the whole thing was assembled this thick (indicating).

THE COURT: This thick (indicating) meaning what?

THE WITNESS: About an inch and a half, copies of which were made available to each of the people who had been involved in the settlement agreement.

THE COURT: This was the top agreement?

THE WITNESS: That is correct.

Q Is there any resolution or agreement which is part of the package you just referred to which related specifically to the settlement of Big Seven against Maclen, a copyright infringement case?

A I believe there is a document authorizing the licensing of these particular songs.

MR. SCHURTMAN: Could I ask the defendants to produce that document, if it exists?

THE COURT: How about that?

MR. BERGEN: I don't think it is relevant.

MR. SCHURTMAN: The witness made it relevant when he testified.

THE COURT: Yes, I asked for the production of that.

Q At the time that Plaintiffs' Exhibit 30, which is the letter by Mr. Dolgenos was written, was any discussion as to how the first part of the '73 settlement would be complied with?

A No.

Q Was there not any discussion about that at all? Was it your understanding and knowledge at the time that the first part of the agreement had not yet been complied with?

A It had been in part.

Q Which part?

A Ya Ya and the Walls and Bridges album.

Q Have you ever heard Ya Ya and the Walls and Bridges album?

A Yes, sir.

Q How long is Ya Ya?

A It's not very long.

Q Do you consider that a legitimate recording, full recording of your song?

MR. BERGEN: Objection.

THE COURT: Overruled.

A I believe it was within what was contemplated in the settlement agreement.

Q What about compliance as to the other two songs?

A It was my understanding that they would appear in Rock and Roll when the album was finished.

Q What was your understanding on December 31, 1974, as t when the Rock and Roll album would be finished?

A I didn't know when it would be released.

Q Well, did you know anything about whether any work was being done on that album?

A At that time, no, I didn't. I am not in

New York all the time.

Q Since you apparently participated in the preparation of Plaintiffs' Exhibit 30, did you raise the question with anyone about when and how the first part of the settlement agreement would be complied with?

MR. BERGEN: I don't believe there has been any testimony by Mr. Graham that he participated in the preparation.

THE COURT: I think that is right. I sustain the objection.

Q Did you have anything to do with the preparation of Plaintiffs' Exhibit 30?

A After the conclusion of the settlement agreement when I was advised that the papers had been signed --

THE COURT: Can't you respond?

A The answer is yes.

Q What was the nature of your participation?

A I called Mr. Dolgenos and I asked him to be sure to get out a letter to Mr. Levy licensing the masters that had to be approved in the settlement agreement.

Q Now, at that point did you and Mr. Dolgenos or anyone else discuss the question of what happens to the first part of the settlement agreement?

A No, we did not.

THE COURT: You did not discuss it?

THE WITNESS: Not at that time, no.

Q Did you ever discuss it subsequent to that time?

A With Mr. Dolgenos?

Q Or with anyone.

A I don't believe so, no.

Q Do you know whether the settlement agreement has ever been complied with?

A I believe it has, yes.

Q You believe that three songs have been released, three Big Seven songs?

A Yes.

Q Which ones?

A I think it is Ya Ya twice and You Can't Catch Me, which was specifically required, which came out on the Rock and Roll album.

Q You regard the double release of Ya Ya as compliance with the agreement?

A Yes.

THE COURT: I am a little off. Was there time in the fall of 1974 when you were talking with Mr. Seider?

A About the Walls and Bridges album?

THE COURT: Right. No. There was a time, and I guews it was in 1974, when you were talking with Mr. Seider about this question of Walls and Bridges album?

THE WITNESS: Yes, sir.

THE COURT: You were discussing whether there was somehow a breach of the settlement agreement?

THE WITNESS: That is right.

THE COURT: I am just interested in this small point about Ya Ya being in Walls and Bridges.

THE WITNESS: Sir?

THE COURT: Did you at that time know that Ya Ya would be in Walls and Bridges?

THE WITNESS: No.

THE COURT: And so you were thinking at that time in terms of the so-called Rockand Roll or Spector album being the album that would take care of the settlement agreement?

THE WITNESS: It would have three Morris Levy tuns on it at that time, one being You Can't Catch Me.

Q When was it that it came into your mind that Walls and Bridges partly complied with the settlement agreement?

A When I heard it and Ya Ya was on it.

THE COURT: When did you hear it?

THE WITNESS: I believe the first time I heard it was when the next time I came to New York after the album was released. Mr. Seider gave me a copy and I took it back to Illinois and I played it.

THE COURT: That would be some time in the summer or fall of 1974? Something like that?

THE WITNESS: It would be the fall.

THE COURT: The fall?

THE WITNESS: Yes.

THE COURT: It was well before December 29th or 30th?

THE WITNESS: I think it was November some time, during that meeting.

THE COURT: I think we will have to take our luncheon break until a quarter of two.

MR. PRETTYMAN: We may have to get our lunch a little later. I hope we can get it in before a quarter of two. We have to see that witness.

THE COURT: You will have to get together with him the best you can.

(Luncheon recess taken.)

United States Court of Appeals
For the Second Circuit

Big Seven Music Corp. and Adam VIII, LTD.,
Plaintiffs-Appellants,

against

John Lennon, Apple Records, Inc., Harold Selder, Capitol Records, Inc. and EMI Records Limited,
Defendants-Appellees,

and

Morris Levy,
Additional Defendant on Counterclaim-Appellant.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

Jerry N. Simmons, being duly sworn, deposes and says that he is over the age of 18 years, is not a party to the action, and resides at 25 Elliott Place Bronx, N.Y. 10452

That on Nov. 19, 1976, he served

One Appendix Volume 1-6 and one Exhibit Volume and two Briefs on behalf of Plaintiffs-Appellants and Additional Defendant on Counterclaim-Appellant.

On:
Marshall Bratter Greene Allison & Tucker, Esqs.
430 Park Avenue
New York, N.Y. 10022

Cleary, Gottlieb, Steen & Hamilton, Esqs.
One State Street Plaza
New York, N.Y. 10004

by delivering to and leaving same with a proper person or persons in charge of the office or offices at the above address or addresses during the usual business hours of said day.

Sworn to before me this
19 day of November, 1976

Notary Public, State of New York
Qualified in New York County
Commission Expires March 30, 19